

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In Re:)	
)	Case No. 08-61570-RBK
Yellowstone Mountain Club, LLC,)	
)	
Debtor.)	

(Full caption on next page)

THE HON. RALPH B. KIRSCHER, presiding

TRANSCRIPT OF PROCEEDINGS

November 12, 2008

Transcript Services:

Proceedings recorded by electronic recording;
transcript produced by reporting service.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In Re:

Yellowstone Mountain Club, LLC,

Debtor,

Yellowstone Development, LLC,

Debtor,

Big Sky Ridge, LLC,

Debtor,

Yellowstone Club Construction
Company, LLC,

Debtor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

FOR THE DEBTOR:

JAMES A. PATTEN
Attorney at Law
Suite 300, The Fratt Building
2817 Second Avenue North
Billings, MT 59101

FOR THE OFFICE OF THE U.S. TRUSTEE:

DANIEL P. MCKAY
Trustee
U.S. Trustee's Office
Liberty Center, Suite 204
301 Central Avenue
Great Falls, MT 59401

FOR CREDIT SUISSE:

MARK S. CHEHI
Attorney at Law
Skadden, Arps, Slate,
Meagher & Flom
One Rodney Square, Seventh Floor
Wilmington, DE 19801

1 APPEARANCES (continued)

2

3 FOR CREDIT SUISSE:

4 EVAN R. LEVY

5 Attorney at Law

6 Skadden, Arps, Slate,

7 Meagher & Flom

8 Four Times Square

9 New York, NY 10036-6652

10

11 CHARLES W. HINGLE

12 Attorney at Law

13 Holland & Hart

14 401 North 31st Street, Suite 1500

15 Billings, MT 59101

16

17 FOR THE AD HOC COMMITTEE OF YELLOWSTONE

18 CLUB MEMBERS:

19 JOHN H. GRANT

20 Attorney at Law

21 Jackson, Murdo & Grant, PC

22 203 North Ewing

23 Helena, MT 59601

24

25

APPEARANCES (continued)

FOR THE AD HOC COMMITTEE OF YELLOWSTONE

CLUB MEMBERS:

JONATHAN B. ALTER

JASKA P. MIETTINEN

Attorneys at Law

Bingham McCutchen, LLP

One State Street

Hartford, CT 06103

FOR MICHAL SNOW:

MATTHEW J. CUFFE

Attorney at Law

Worden Thane, PC

P.O. Box 4747

Missoula, MT 59806

CLARK T. WHITMORE

Attorney at Law

Maslon Edelman Borman & Brand, LLP

3300 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402-4140

APPEARANCES (continued)

FOR THE MONTANA DEPARTMENT OF REVENUE:

TERESA GRACE WHITNEY

JOEL E. SILVERMAN

Attorneys at Law

Montana Department of Revenue

P.O. Box 7701

Helena, MT 59604-7701

FOR THE MONTANA DEPARTMENT OF REVENUE:

LYNN HAMILTON BUTLER

Attorney at Law

Brown McCarroll, LLP

111 Congress Avenue, Suite 1400

Austin, TX 78701

FOR NORMANDY HILL CAPITAL, LP:

QUENTIN M. RHOADES

Attorney at Law

Sullivan, Tabaracci & Rhoades

1821 South Avenue West, Third Floor

Missoula, MT 59801

APPEARANCES (continued)

FOR PRIM VINTAGE DEVELOPMENT, LP:

DEAN A. STENSLAND

Attorney at Law

Boone Karlberg, PC

P.O. Box 9199

Missoula, MT 59807

FOR GARLINGTON, LOHN & ROBINSON, PLLP:

STEPHEN R. BROWN

Attorney at Law

Garlington, Lohn & Robinson, PLLP

P.O. Box 7909

Missoula, MT 59807-7909

FOR CIP SUNRISE RIDGE OWNER, LLC:

BENJAMIN P. HURSH

Attorney at Law

Crowley, Haughey, Hanson,

Toole & Dietrich, PLLP

P.O. Box 7099

Missoula, MT 59807

APPEARANCES (continued)

FOR THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY:

MARK CADWALLADER

Staff Attorney

Montana Department of Labor and Industry

P.O. Box 1728

Helena, MT 59624-1728

FOR EDRA BLIXSETH:

JOSEPH A. EISENBERG

Attorney at Law

Jeffer, Mangels, Butler & Marmaro, LLP

1900 Avenue of the Stars, Seventh Floor

Los Angeles, CA 90067

FOR TIMOTHY BLIXSETH:

JOEL E. GUTHALS

Attorney at Law

Guthals, Hunnes & Ruess, PC

P.O. Box 1977

Billings, MT 59103

I N D E X

WITNESS:

PAGE:

EDRA BLIXSETH:

Direct Examination by Mr. Patten 19

Cross-Examination by Mr. Chehi 44

Cross-Examination by Mr. Alter 51

Cross-Examination by Unidentified Speaker . . . 63

Cross-Examination by Mr. Butler 66

Cross-Examination by Mr. Cuffe 69

Redirect Examination by Mr. Patten 70

1 YELLOWSTONE MOUNTAIN CLUB BANKRUPTCY

2 MISSOULA, MONTANA

3 - - -

4 BE IT REMEMBERED THAT this matter came on for hearing
5 on November 12, 2008, in the United States Bankruptcy
6 Court, District of Montana, The Hon. Ralph B. Kirscher,
7 presiding:

8
9 The following proceedings were had:

10
11 THE COURT: Good afternoon. Please be seated.
12 Let's go ahead.

13 Mr. Patten, I'm not sure, regarding the four
14 entities, if we want to just refer to all -- well, let me
15 just refer to all four of them at this point before we
16 consider, either today or later, your motion to
17 consolidate.

18 MR. PATTEN: Okay.

19 THE COURT: Scheduled for today at this time, In
20 Re: Yellowstone Club, LLC, 08-61570; Yellowstone
21 Development, LLC, 08-61571; Blue Sky Ridge, LLC, 08-61572;
22 Yellowstone Club Construction Company, LLC, 08-61573.

23 Two matters have been scheduled in each case:
24 Motion for joint administration as well as motion
25 authorizing Debtors to obtain postpetition financing,

1 authorizing Debtors to utilize cash collateral -
2 (inaudible) - adequate protection to prepetition secured
3 lenders, scheduling interim and final hearings filed by
4 Debtor.

5 There are objections that have been filed as to
6 the motion authorizing Debtors to obtain postpetition
7 financing. I did not see, but may have missed it, any
8 objections to the motions for joint administration.

9 Mr. Patten.

10 MR. PATTEN: Your Honor, first as a point of
11 clarification, there is some typos in some of the filings.
12 It's Big Sky Ridge and not Blue Sky Ridge.

13 THE COURT: Okay, okay.

14 MR. PATTEN: Your Honor, I'm not aware of any
15 objections to the joint administration.

16 THE COURT: Okay. There is time for response,
17 still, on that --

18 MR. PATTEN: Okay.

19 THE COURT: -- under the 10-day negative notice.

20 I will have all counsel that have been admitted
21 state their appearances.

22 MR. HINGLE: Charles Hingle for Credit Suisse.

23 THE COURT: Now, I want to make sure that they
24 can pick you up on the recording. You may need to be by a
25 microphone. Let's just do an entourage to the mike, and --

1 MR. HINGLE: Your Honor, Chuck Hingle for Credit
2 Suisse. I'm with, today with two gentlemen from the
3 Skadden firm in Wilmington, Mark Chehi and Evan Levy.

4 THE COURT: Okay. And both have you have been
5 admitted, as I recall, pro hac.

6 MR. HINGLE: Pro hac motions have been filed for
7 both, Your Honor.

8 THE COURT: Yes, thank you. Welcome.

9 MR. EISENBERG: Good afternoon, Your Honor.
10 Joseph A. Eisenberg - Jeffer, Mangels, Butler & Marmaro -
11 appearing on behalf of Ms. Blixseth. There's a pro hac
12 application which is somewhere in process.

13 THE COURT: Okay, thank you. Mr. Grant.

14 MR. GRANT: Your Honor, John Grant for the Ad Hoc
15 Committee of Yellowstone Club Members.

16 And we have also filed a motion for pro hac vice
17 admission of Jonathan Alter.

18 THE COURT: Okay.

19 MR. GRANT: And he is here, and I'd like your
20 permission for him to argue.

21 THE COURT: Okay. I'm assuming you've paid the
22 pro hac fee and -- with your motion.

23 MR. GRANT: I was in the, I was in the car coming
24 here as it was being filed.

25 THE COURT: Okay, okay.

1 MR. GRANT: So I'm certain that it -- if it
2 hasn't been, it will be by the end of the day.

3 THE COURT: Okay, thank you.

4 MR. GRANT: Thank you, Your Honor.

5 MS. WHITNEY: Your Honor, Teresa Whitney for
6 Montana Department of Revenue.

7 With me, I have Joel Silverman, also representing
8 Department of Revenue. And we have filed an application
9 for pro hac for Lynn Butler, and it is my understanding the
10 fees are in the mail.

11 THE COURT: Okay. We've all heard that before.

12 Mr. Rhoades.

13 MR. RHOADES: Your Honor, Quentin Rhoades, on
14 behalf of Normandy Hill Capital.

15 MR. CUFFE: Your Honor, Matt Cuffe - Worden Thane
16 - here on behalf of Michael Snow, a Class B member and a
17 creditor.

18 TRUSTEE MCKAY: Good afternoon, Your Honor. Dan
19 McKay for the Office of the U.S. Trustee.

20 MR. STENSLAND: Dean Stensland with the law firm
21 of Boone Karlberg representing Prim Vintage Development,
22 LP.

23 MR. CADWALLADER: Mark Cadwallader, Montana
24 Department of Labor and Industry.

25 MR. HURSH: Benjamin Hursh with the Crowley Law

1 Firm here on behalf of CrossHarbor.

2 THE COURT: Okay.

3 MR. BROWN: Steve Brown with the Garlington Law
4 Firm, and I'm here on behalf of the Garlington Law Firm.

5 THE COURT: Okay. Any others that wish to state
6 their appearances?

7 MR. GUTHALS: Yes, Your Honor. This is Joel
8 Guthals in Billings. And, Your Honor, I'm appearing on
9 behalf of Timothy Blixseth, creditor.

10 THE COURT: Okay.

11 MR. WHITMORE: Your Honor, this is Clark
12 Whitmore. I'm appearing for Mike Snow in addition to Matt
13 Cuffe.

14 And I believe that a pro hac vice application has
15 been filed.

16 THE COURT: Okay.

17 MR. WHITMORE: And Mr. Cuffe --

18 MR. MIETTINEN: Your Honor --

19 THE COURT: Go ahead.

20 MR. MIETTINEN: Your Honor, Jaska Miettinen with
21 Bingham McCutchen for the Ad Hoc Committee of Yellowstone
22 Club Members on the phone.

23 THE COURT: Okay. We're having -- from the
24 standpoint of everyone here in the Missoula courtroom, I'm
25 finding it very hard to hear the people on the telephone.

1 I'm not sure if it's a volume thing, or whatever, but I
2 would venture to say there's probably no one that heard the
3 two people that just spoke except maybe me, in part.

4 Is Mr. Manson appearing in Butte?

5 THE CLERK: Judge, Mr. Manson is not here.

6 THE COURT: Okay. No one's appearing in Butte?

7 THE CLERK: No, there isn't.

8 THE COURT: Okay. And only Mr. Guthals in
9 Billings, okay.

10 Initially, obviously -- Mr. Patten.

11 MR. PATTEN: Your Honor, I want to ask the
12 Court's permission that Mr. Eisenberg, who's not been
13 admitted pro hac vice yet, be permitted to represent
14 Ms. Blixseth in these proceedings today.

15 THE COURT: Okay. It's in process, as I
16 understand.

17 MR. EISENBERG: Yes, Your Honor.

18 THE COURT: Okay, very well. Just, I guess, a
19 little bit of discussion about ground rules and background.
20 Obviously, this has been filed on fairly short notice,
21 hearings have been set with fairly short notice.
22 Obviously, everyone's had notice of the hearing or we
23 wouldn't have a courtroom full of people. So I am going to
24 take that as a comment that, in fact, everybody does have
25 notice and notice as a position on the motions that have

1 been filed.

2 As it relates to just proceeding and appearing
3 before this Court, we may meet, depending on where we need
4 to meet, in different locations. It just happened today
5 that I was here, and it may have been easier to get people
6 in and out of Missoula than maybe some other sites. I
7 don't know that. But we may also -- this is actually a
8 case that would be normally heard in Butte. That's
9 probably where the 341 meeting, in fact, will be scheduled
10 as it's scheduled. But we may hear, may hear parts of this
11 in Billings, Great Falls. Whatever the need is and the
12 urgency of the matter, we will schedule things wherever and
13 whenever.

14 As it relates to video conferencing and the use
15 of video conferencing, if you don't know, you will soon
16 know that I am an advocate of video conferencing and expect
17 people to use it rather than traveling over the country to
18 attend. Typically, we like to keep the sites to four just
19 because we can have all -- we have three, three sites up
20 now, but we can have four sites up. We can also cascade to
21 other sites depending upon the need. But if you're
22 appearing from out of state, you might want to look into
23 facilities nearby for purposes of accessibility, and
24 whether matters come up on short notice, if you could
25 appear by use of video conferencing. I use it for

1 everything, for uncontested, contested trials, whatever.
2 So I'm going to push it. And if it's not being used by
3 people that have to travel a lot, which incurs a lot of
4 expense, I'm going to look at those very carefully, why you
5 weren't appearing by video, as it relates to travel
6 expense, airline expense, all of that. So keep that in
7 mind. There are some things you just can't appear by video
8 - that's fine, I understand - but at least be aware it's
9 there, and I expect it to be used.

10 I would imagine there may be press that has some
11 interest in this case. If so, they're certainly welcome at
12 any of the hearings. They're public hearings. And,
13 certainly, we'll make accommodation for them. I don't know
14 if there's any press here today or not, but if there is,
15 you're certainly welcome. If you need background
16 information or if you need other information from public
17 documents that might be filed with the Court, then you
18 should contact the clerk's office in Butte. That's where
19 all matters are filed.

20 As it relates to recording, we digitally record.
21 That's being recorded in Butte as we speak, which goes over
22 the video conferencing lines. But the Court staff there is
23 very accommodating, very helpful, so if you need something,
24 please contact them.

25 I expect the parties to be civil; get through the

1 matters that we need to; put on the evidence as need be;
2 present exhibits in advance, file them online unless
3 they're extensive, voluminous. Then I'll certainly
4 consider that they be either sent to me or, or -- by mail
5 or Federal Express, or whatever.

6 But I use CM/ECF exclusively on the bench. I try
7 to get away from the paper. So if you have things you want
8 to get filed or you want to get to the Court, you don't
9 need to send extra copies to chambers - it's a waste of
10 your paper and your postage - because I'll pick it up off
11 of online unless it's, like I say, voluminous. So if you
12 have a question about anything like that that you're
13 wanting to submit and whether it's too big or not, check
14 with Lynn Myers, who's the chief deputy clerk. And on any
15 matters, feel free to either contact her or the chief
16 clerk, Bernie McCarthy, and they will get back to me if
17 there's an issue that needs to be resolved.

18 In a case like this, I expect to move through it
19 quickly. I will devote as much time as necessary to it to
20 make sure it gets done. I expect counsel to do the same
21 and the parties to do the same; meet the deadlines, filing
22 schedules, all of those things I expect to be done.

23 What am I overlooking or missing -- it's probably
24 standard for all of you in the courts that you appear in.

25 So with that, Mr. Patten, I'll let you proceed.

1 MR. PATTEN: Your Honor, I would call Edra
2 Blixseth.

3 THE COURT: If you could come to the podium to be
4 sworn by the clerk, who will appear on the video. You can
5 just stand right there by the microphone for now.

6 EDRA BLIXSETH, WITNESS, SWORN

7 DIRECT EXAMINATION

8 BY MR. PATTEN:

9 Q. Would you please state your name?

10 A. Edra Blixseth. Am I too close?

11 Q. And, Ms. Blixseth, what's your relationship with what
12 is known as the Yellowstone Club?

13 A. I'm the owner of BGI, who owns the Yellowstone Clubs.

14 Q. Okay. And it's correct, isn't it, that there are
15 several entities that make up the Yellowstone Club?

16 A. That's correct.

17 Q. Could you advise the Court of what the names of those
18 entities are?

19 A. Yellowstone -- what we call "YDI", Yellowstone
20 Development, Inc.; Yellowstone Mountain Club; Big Sky
21 Ridge.

22 Q. And do these entities also own other companies,
23 corporations, or limited liability companies?

24 A. There are some other companies, yes --

25 Q. Okay.

1 A. -- involved in that, yeah.

2 Q. There's a company named "Yellowstone Hotel Management"?

3 A. Correct.

4 Q. Who owns that?

5 A. I have to tell you, Yellowstone Hotel was, was created
6 during the time -- the last couple of years, I've been
7 frozen out of Yellowstone Club. That was created during
8 that time. So when I answer those questions, I want to
9 give that caveat that I might not be up to speed quite yet
10 on that, but I think that that is owned by YDI.

11 Q. Okay. And before we go any further, how long has it
12 been since you were not frozen out of the --

13 A. Just August of this year.

14 Q. Okay. So you're still getting up to speed on the
15 details?

16 A. Trying very hard.

17 Q. Okay. There's a company called Sunrise Ridge?

18 A. Correct.

19 Q. Well, let me go back. What does Yellowstone Hotel
20 Management do?

21 A. It owns Buck's T-4.

22 Q. Okay. And is that used for housing for employees?

23 A. Correct.

24 Q. Sunrise Ridge does what?

25 A. Sunrise Ridge was actually sold to CrossHarbor.

1 There's a small portion of Sunrise Ridge that we still have
2 an agreement with CrossHarbor that there are some other
3 partners involved with.

4 Q. What is Sunrise Ridge?

5 A. It's a, it's -- I hate using "condo", but it's a chalet
6 development within Yellowstone Club.

7 Q. Okay. There's an entity called "Yellowstone
8 Utilities"?

9 A. Yes.

10 Q. What is that?

11 A. That's the, the corporation in which we have the
12 utilities that provide utilities for Yellowstone Club.

13 Q. Okay. There's something called "St. Andrews Golf Club
14 International"?

15 A. That was a purchase that was for the now defunct
16 Yellowstone Club World that was going to be developed into
17 a golf course.

18 Q. And there's an entity called "Cosborn Investments"?

19 A. That's an entity that holds the Chateau Farcheville
20 that's just outside of Paris that was also a Yellowstone
21 Club World location.

22 Q. Okay. And is that the French castle?

23 A. Yes, otherwise known as.

24 Q. And is Cosborn Investments owned by Yellowstone
25 Development?

1 A. Yes, it is.

2 Q. Other than the St. Andrews and the Cosborn and the
3 other -- the debtors in this case, Yellowstone Mountain
4 Club, Yellowstone Development, Big Sky Ridge, Yellowstone
5 Club Construction Company, Yellowstone Hotel Management,
6 Sunrise Ridge, and Yellowstone Utilities are all involved,
7 in one aspect or the other, of the Yellowstone Club?

8 A. That's correct.

9 Q. Okay. Can you describe to Judge Kirscher, please, what
10 the Yellowstone Club is? What kind of business is it
11 engaged in? What does it own, generally?

12 A. Well, Yellowstone Club, in my definition, is in the, in
13 the business of providing an experience and a Montana
14 experience to certain people that want to be able to be
15 here and own property. Sometimes it's been described as a
16 real-estate development, but that's not how I've ever
17 viewed it. And that's always been our philosophy within
18 our sales program.

19 Q. Is it a resort or an experience kind of a business?

20 A. It's a resort that allows families to enjoy the Montana
21 experience from skiing to fishing to golfing in the summer
22 and everything else that Montana has to offer.

23 Q. And the families are members of the club?

24 A. Correct.

25 Q. And in order to utilize the club's facilities, you have

1 to be a member?

2 A. Correct.

3 Q. Okay. How many employees does the Yellowstone Club
4 have?

5 A. It varies from season, when we're off season and when
6 we're at full season, but anywhere from 400 to 600.

7 Q. What time of the year is the busiest season
8 employment-wise for the Yellowstone Club?

9 A. Gearing up right now to get ready for the holiday
10 season going all the way through April 15th.

11 Q. The ski season?

12 A. The ski season.

13 Q. Okay. And does the Yellowstone Club create -- let me
14 back up.

15 A. Okay.

16 Q. Generally, what's the monthly payroll of the
17 Yellowstone Club?

18 A. It's about 600,000.

19 Q. Okay. And does the Yellowstone Club spend money
20 locally on goods, services, contracts, and such?

21 A. We try to, we try to use as many local vendors and
22 Montana -- both -- vendors, purveyors, contractors, that
23 kind of thing, yes.

24 Q. Is the Yellowstone Club significant to the local
25 economy?

1 A. I believe it is, yes.

2 Q. What's the value of the Yellowstone Club real-estate
3 assets?

4 A. The value, the value on the, the books of the
5 Yellowstone Club for the real estate is about 780,
6 780 million.

7 Q. Okay. And are there unsold memberships to the
8 Yellowstone Club?

9 A. Yes, there are.

10 Q. How many?

11 A. We're at 360-something now, I think, and we're going to
12 864.

13 Q. Okay. What's the value of the unsold memberships?

14 A. That would be \$360 million - \$380 million.

15 Q. Okay. And then there will be a number of items of
16 personal property of ski lifts, and irrigation systems,
17 furniture, and so forth?

18 A. Correct.

19 Q. And those are all set out in the various bankruptcy
20 schedules that we've filed in this case?

21 A. Yes, they are.

22 Q. And the values of all of that property, to the best of
23 your ability, is as set out in the bankruptcy schedules?

24 A. Yes, they are.

25 Q. Generally, what are the liabilities of the Yellowstone

1 Club, just in total dollars?

2 A. Including Credit Suisse?

3 Q. Yes.

4 A. Oh, 355 - 360.

5 Q. Million?

6 A. Million. Sorry.

7 Q. Thank you. You're familiar with the Credit Suisse
8 loan?

9 A. Yes, I am.

10 Q. And that's a loan that Credit Suisse is an agent for a
11 bunch of other lenders; is that right?

12 A. Yes, it is.

13 Q. Okay. When did the Yellowstone Club start business?
14 When did it start selling memberships?

15 A. When it started business and when it started selling
16 memberships are kind of two different things. And I'll go
17 back to 1999, I wish Charlie was over here, 1998 - 1999.

18 Q. That's when it started business?

19 A. That's when it started selling memberships.

20 Q. Okay. And you've involved in the Yellowstone Club
21 since 1998 - 1999?

22 A. From the beginning.

23 Q. Okay. Did you have an official role in the operations
24 for the Yellowstone Club?

25 A. Yes. Until just a couple years ago, I was the COO.

1 Q. "Chief operating officer"?

2 A. Correct.

3 Q. Okay. And then something happened a couple years ago?

4 A. Yes.

5 Q. What was it that happened a couple years ago?

6 A. I filed for divorce.

7 Q. Okay. And did you cease being the chief operating
8 officer upon filing your divorce?

9 A. It actually happened just a little bit prior to that.
10 You don't normally file for divorce -- something leads up
11 to it. So I believe about six months prior to that - could
12 be a little longer - I resigned by position as COO, Tim
13 resigned his position as COO, and Dieter Huckestein was
14 hired to become president and CEO.

15 Q. And during the period of your divorce, did you have any
16 involvement in the operation of the Yellowstone Club?

17 A. I was completely frozen out.

18 Q. Were you frozen out of the information regarding
19 Yellowstone Club?

20 A. I was frozen out of everything.

21 Q. Everything. So during the period of the freeze-out,
22 I'll call it, you obtained no inside information regarding
23 the operations of the Yellowstone Club?

24 A. During that time?

25 Q. Yes.

1 A. Yeah; no, I did not.

2 Q. Okay. When, when was your divorce completed?

3 A. It just was finalized about a month ago.

4 Q. Okay. Prior to a month ago, did you become active
5 again in the operations of the Yellowstone Club?

6 A. Yes. We signed an MSA in which I bought BGI, and that
7 closed in August of this year. And BGI owns Yellowstone
8 Clubs.

9 Q. Okay. Tell me, if you would, what an MSA is?

10 A. Oh, a marital settlement agreement. Sorry.

11 Q. Okay. So as part of your divorce settlement, you ended
12 up with BGI, which is Blixseth Group, Inc.?

13 A. It was Blixseth Group, Inc., and we changed the name to
14 Blix Group, Inc., yes.

15 Q. Okay. And I'll call it "Blix".

16 A. We just call it "BGI".

17 Q. BGI is a member of the debtor limited liability
18 companies?

19 A. I'm sorry, I don't understand your question.

20 Q. BGI owns a membership interest in the debtor limited
21 liability companies?

22 A. Correct.

23 Q. And by virtue of your ownership of BGI, you control the
24 debtor limited liability companies?

25 A. Correct.

1 Q. And you've been -- you've had that control since last
2 August?

3 A. Correct.

4 Q. And until August, you didn't have information about the
5 operations of the Yellowstone Club?

6 A. No, I did not.

7 Q. And you had no information about the, the debts of the
8 Yellowstone Club?

9 A. Well, I had information prior to the two years I was
10 frozen out, but not during that time.

11 Q. Okay. And you have information as to the liquidity of
12 the Yellowstone Club as of last August?

13 A. I started getting some information from members and
14 concerned employees and vendors in early spring of last
15 year, tried to find a way to step back in to see what those
16 were. But other than that, I still didn't get anything
17 officially.

18 Q. Okay. And so it wasn't until you regained power, I'll
19 say, under your marital settlement agreement that you
20 understood the full scope and extent of BGI -- or, excuse
21 me, of the Yellowstone Club's financial condition?

22 A. Correct.

23 Q. And that was three months ago in August?

24 A. Hm-hmm.

25 Q. Can you generally describe what BGI's -- or, I'm sorry,

1 can you generally describe what the Yellowstone Club's
2 financial condition was as of August when you stepped back
3 into control?

4 A. Well, there was purveyors not being paid, construction
5 people not being paid, employees actually putting things
6 that Yellowstone Club needed on their own personal credit
7 cards. It was more of a mess than I realized. I knew it
8 was kind of a mess going in, but it was -- actually,
9 CrossHarbor helped me quite a bit because they had been
10 doing due diligence for a purchase. And so I -- they were
11 able to help me get up to speed faster than I would have
12 been able to.

13 Q. Okay. Tell the Court, if you would, what CrossHarbor
14 is.

15 A. CrossHarbor is an entity that was going to purchase
16 Yellowstone Club, and the sale fell through in the spring
17 of this last year. And they have been working for about a
18 year and a half on due diligence and had done a really
19 in-depth job of going through the Yellowstone Club and the
20 expenses and the operating of it. And then when I -- then
21 they came to me, and then I came to them, and we kind of
22 shared information for the betterment of Yellowstone Club
23 to quickly get up to speed.

24 Q. Once you got back into control, what, what steps or
25 actions did you take in order to stabilize the financial

1 condition?

2 A. The first thing I did was try to market the Yellowstone
3 Club World locations so that we could monetize those and
4 get those back into cash flow for Yellowstone Club which
5 would have resolved the liquidity situation, actually. I
6 met with Sam Byrne and CrossHarbor, and we resolved any
7 issues that might have been left over and the collapse of
8 the sale. We actually worked together closely with them,
9 actually put one of their people in as, as interim COO so
10 that we could evaluate and more quickly get up to speed to
11 see what we -- direction we needed to go.

12 Q. Did you invest any of your own funds into the
13 Yellowstone Club?

14 A. Yes, I did.

15 Q. Approximately how much?

16 A. A little over \$16 million.

17 Q. Okay. And did your investment of your own funds
18 stabilize the finances?

19 A. No, it did not.

20 Q. And did that bring us to where we are today?

21 A. Partially.

22 Q. Okay. Are you able to invest more of your personal
23 funds into the Yellowstone Club?

24 A. I am not.

25 Q. Does the Yellowstone Club have the funds today, I'll

1 say, in order to pay for its day-to-day operations?

2 A. No, it does not.

3 Q. Absent the Court granting the motion that's before it
4 right now, do you foresee the Yellowstone Club having the
5 funds necessary to pay for its operations going forward?

6 A. No, I do not.

7 Q. Is there any substantial source of income or
8 contributions, or whatever, to bring money into the
9 Yellowstone Club to pay for its operations, any absence of
10 the Court approving an arrangement such as is before the
11 Court today?

12 A. Not at this time. And I'm still diligently working on
13 trying to settle the Yellowstone Club World locations and
14 those things, but the market turned on us so I'm still
15 working on those things. But that's an option out there.

16 Q. Okay. Have you had negotiations with anyone in the
17 last month to provide a loan in order to finance the
18 operations of the Yellowstone Club?

19 A. Yes, I have.

20 Q. Who have you talked to?

21 A. Credit Suisse and CrossHarbor.

22 Q. And have you been talking to them continually about
23 financing for operations?

24 A. It feels like nonstop.

25 Q. Up through yesterday?

1 A. Yes.

2 Q. Okay. Did you advise at any time in the last two weeks
3 CrossHarbor that you were contemplating Yellowstone Club
4 filing for bankruptcy?

5 A. Oh, yes.

6 Q. Okay. And the same with Credit Suisse?

7 A. Correct.

8 Q. Okay. So for the past several weeks, both have known
9 of the pending -- impending bankruptcy filings?

10 A. Correct.

11 Q. Okay. And you have been discussing and negotiating
12 with both arrangements for debtor-in-possession financing
13 for the past couple of weeks?

14 A. Yes, I have.

15 Q. Are you familiar with the terms and conditions of the
16 proposed CrossHarbor debtor-in-possession financing?

17 A. Yes, I am.

18 Q. And you're familiar with the terms and conditions of
19 the Credit Suisse debtor-in-possession financing?

20 A. Yes, I am.

21 Q. Did they differ? Did the --

22 A. Yes, they did.

23 Q. -- terms differ?

24 Was there a difference in the interest rate?

25 A. Yes, there was.

1 Q. Which of the two provided the better interest rate?

2 A. Credit Suisse.

3 Q. Did the CrossHarbor debtor-in-possession financing
4 require getting a priming lien from the Court over the
5 security interest and mortgages of Credit Suisse?

6 A. Yes, it did.

7 Q. Did you have conversations with Credit Suisse as to
8 whether it would oppose or accept a priming lien granted to
9 CrossHarbor?

10 A. Yes, I did.

11 Q. What was Credit Suisse's position with regard to a
12 CrossHarbor priming lien?

13 A. "Absolutely not."

14 Q. Okay. They would not agree to it?

15 A. They would not consider it.

16 Q. Okay. And did Credit Suisse advise you of the extent
17 to which they would resist?

18 A. They were very clear.

19 Q. Very clear what?

20 A. Of their -- that, that they would resist that --

21 Q. Okay.

22 A. -- and fight that.

23 Q. What was the length of time that the CrossHarbor
24 debtor-in-possession financing was to cover?

25 A. Thirteen weeks.

1 Q. And was there any condition about having a Chapter 11
2 plan confirmed by a particular date?

3 A. Yes, there was.

4 Q. Do you remember what the date was?

5 A. February 13th, I believe.

6 Q. And do you remember what the consequence -- was there a
7 consequence if the plan was not confirmed by that date?

8 A. Well, it would immediately go into -- I don't have
9 bankruptcy terms down; I've just had a two-week crash
10 course here, so -- but it would immediately go into -- I
11 think it's a 355 -- 3-something sale.

12 Q. A 363 sale?

13 A. It's a 363, there we go.

14 Q. Okay. So if a plan wasn't confirmed by February 13,
15 2009, then you would have to commit to a sale of the
16 Yellowstone --

17 A. Immediately.

18 Q. Did the CrossHarbor debtor-in-possession financing get
19 you through the ski season?

20 A. No, it got through 13 weeks.

21 Q. Okay. Was there a discussion about continuing it
22 beyond 13 weeks with CrossHarbor?

23 A. With CrossHarbor funding it?

24 Q. Yes.

25 A. No. There was discussion, but --

1 Q. Would CrossHarbor agree to fund it for --

2 A. No.

3 Q. Okay. Now, the Credit Suisse debtor-in-possession
4 financing is for what time period?

5 A. This initial one is only for the -- to get us through
6 the end of this month.

7 Q. Okay. Does the Credit Suisse financing allow you to
8 ramp up for the ski season?

9 A. Yes, it does.

10 Q. What's the projected or predicted date of opening the
11 ski area?

12 A. December 12th or 16th.

13 Q. Okay. What's going to happen at the end of the three
14 weeks with Credit Suisse?

15 A. You're asking for my prediction?

16 Q. Well, do you have -- what do you contemplate will get
17 the Yellowstone Club through the entire ski season?

18 A. Well, I contemplate that I'm taking Credit Suisse's
19 word that the -- part of what they said was that if they
20 would get us through this immediate -- so that we would be
21 prepared for ski season. And then they would sit down at
22 the table and have everybody involved that wanted to be
23 involved - CrossHarbor, the members, anybody that had
24 anything to offer - to come up with a long-term plan for an
25 additional DIP loan.

1 Q. Okay, to carry it beyond the initial three-week period?

2 A. Oh, yes.

3 Q. Okay. And with regard to sitting at the table, are
4 there any current plans for meetings with Credit Suisse to
5 start that process for arranging a debtor-in-possession
6 financing after the end of the three-week period?

7 A. About 15 minutes after we leave this courtroom.

8 Q. There will be a meeting with Credit Suisse?

9 A. Yes.

10 Q. And anybody else?

11 A. I think CrossHarbor, I think members. I'm not sure who
12 else besides CrossHarbor and members and Discovery that
13 will be there; but then we also have additional meetings
14 that we are going to try to have tomorrow since people
15 traveled all this way here, as many as we can; and then
16 scheduled meetings next week in New York where more members
17 can be present, and Credit Suisse and CrossHarbor and
18 everybody is more locally involved there.

19 Q. Taking the two proposals and comparing them, the Credit
20 Suisse proposal and the CrossHarbor proposal, did you make
21 some determination as to which you felt was preferable?

22 A. I made a determination of what I felt was preferable
23 for today.

24 Q. Okay. And what, what was that?

25 A. Credit Suisse.

1 Q. Okay. And did you come to that conclusion in
2 considering the various aspects and elements of both of the
3 competing debtor-in-possession financing proposals?

4 A. It was going through the math of a logical business
5 decision based on what we thought would be the easiest
6 transition into the Chapter 11 to then have the time to sit
7 down and, and figure out which is the best for a long-term
8 DIP and not, maybe, have Credit Suisse object to anything
9 else we were trying to do so we had the time to actually
10 evaluate CrossHarbor's and the other things, including
11 Credit Suisse, to go forward in more of a business, logical
12 standpoint rather than rushing in 24 or 48 hours.

13 Q. And so did you exercise your business judgment and
14 decide to pursue the Credit Suisse proposal?

15 A. I felt that it was in the best interest of Yellowstone
16 Club and the safest route to protect everything, yes.

17 Q. Thank you. Has Credit Suisse made any threats to you
18 in order to get you to agree to go along with their
19 proposal?

20 A. No.

21 Q. Have they made any promises to you other than those
22 that are set out in the term sheet that has been submitted
23 to the Court?

24 A. Yes, they have.

25 Q. What was that?

1 A. The promise to sit down at the table in good faith,
2 with everybody involved, including the members and
3 CrossHarbor and anyone else that I felt was -- would be
4 somebody that would be an option for the best interest of
5 Yellowstone Club for the long term.

6 Q. And do you think that they are meeting that commitment
7 to sit down in good faith?

8 A. Absolutely. We've got it scheduled for right after.
9 And I also don't think that they would have put up the
10 short-term DIP if they weren't planning on doing that.

11 Q. Okay. Did you negotiate with Credit Suisse at arm's
12 length to derive the term sheet that is before the Court?

13 A. When you say "at arm's length" --

14 Q. Were you allowed an opportunity to comment on the
15 terms?

16 A. Oh, yes, absolutely.

17 Q. And to negotiate some of the terms?

18 A. Yes, absolutely.

19 Q. Has Credit Suisse treated you fairly in the course of
20 the negotiations?

21 A. Yes, they have.

22 Q. Has Credit Suisse been heavy-handed in any way in the
23 course of the negotiations?

24 A. No.

25 Q. Generally, you are aware of the terms of the Credit

1 Suisse DIP financing?

2 A. Yes, I am.

3 Q. Are you familiar with the budget that it's based upon?

4 A. Yes, I am.

5 Q. (Inaudible, talking over each other)?

6 A. Discovery and Yellowstone Club put the budget together,
7 so I'm very familiar.

8 Q. You've mentioned Discovery a couple of times. Can you
9 tell Judge Kirscher what Discovery is?

10 A. Oh, I'm sorry. Discovery is -- it's Discovery Land,
11 and they're a management -- they're actually owners of
12 other -- or other -- similar to Yellowstone Club, second to
13 none of managing private membership clubs. And I had
14 promised the members to put in a third-party professional
15 management, and that was one of the first acts I did when
16 taking over.

17 Q. And so the budget that is before the Court and that
18 will be funded under the DIP financing is based on the
19 budget that the Yellowstone Club, in conjunction with
20 Discovery, put together?

21 A. Yes. And I have to say that CrossHarbor actually
22 helped with it as well because of their extensive knowledge
23 of the last year and a half and Discovery just coming in.
24 So with the senior management of Yellowstone Club, it was a
25 collaboration.

1 Q. Does that budget meet the immediate needs of the
2 Yellowstone Club?

3 A. The immediate needs.

4 Q. The necessary expenses for the next three weeks --

5 A. Yes, it does.

6 Q. -- in order to get the Yellowstone Club ramped up for
7 the ski season?

8 A. Correct.

9 Q. Do you understand that the DIP financing will provide
10 Credit Suisse's agent with a first lien on the assets of
11 the Yellowstone Club that are already collateralized to
12 support the Credit Suisse lien?

13 A. I understand that the people putting up the money were
14 going to be primed before that.

15 Q. Okay. So it's priming itself, in effect, right?

16 A. Basically.

17 Q. Okay. And for those properties that are subject to
18 third-party liens, do you understand that Credit Suisse
19 will get a junior lien to the existing liens on those
20 properties?

21 A. Yes, I do.

22 Q. And do you understand that the Credit Suisse DIP
23 financing will require the employment of a chief
24 restructuring officer?

25 A. Yes.

1 Q. And have you met the proposed chief restructuring
2 officer?

3 A. I have.

4 Q. Is that Mr. Greenspan --

5 A. Yes, it is.

6 Q. -- and his company?

7 A. Yes.

8 Q. If the Court disallows the proposed Credit Suisse DIP
9 financing, what will happen to the Yellowstone Club in the
10 immediate future?

11 A. We would not be able to continue operation.

12 Q. Does the Yellowstone Club have sufficient money to make
13 its next payroll?

14 A. No, it does not.

15 Q. Does it have the funds necessary to pay utilities?

16 A. No, it does not.

17 Q. Does it --

18 THE COURT: When is the next payroll?

19 MR. PATTEN: Your Honor, the payroll was paid --

20 THE WITNESS: Friday.

21 MR. PATTEN: -- Friday. And so the payroll lags
22 14 days, 10 days - 14 days. So right now, there's about a
23 seven-day -- or at the time of filing on Monday, there was
24 about a seven-day back-payroll, if you will. And those
25 employees have been set out on Schedule E of the schedules.

1 Q. (By Mr. Patten) And let me ask you this, Ms. Blixseth:
2 Is it your intention to pay the employees for their
3 prebankruptcy wages as part of this DIP financing?

4 A. I'm -- I understand under Montana law that we're not
5 allowed to do that.

6 Q. Okay. And is the same true for any other critical
7 vendor that existed as of the date of filing?

8 A. That's what I've been -- understand Montana law is.

9 Q. Okay.

10 UNIDENTIFIED SPEAKER: It's bankruptcy law, it's
11 bankruptcy law.

12 THE WITNESS: Oh, is it?

13 Q. (By Mr. Patten) Will the Yellowstone Club shut down
14 and cease operations?

15 A. If we don't have the DIP?

16 Q. Yes.

17 A. Yes.

18 Q. And if that happens, how will that affect the value of
19 the Yellowstone Club's assets?

20 A. Well, we won't have an operating enterprise to be able
21 to sell the experience of what Yellowstone Club is, so
22 we -- it shuts us down. I mean we have nothing to -- that
23 we could sell. We wouldn't have employees to take care of
24 services, or vendors, or -- so --

25 Q. Would it have a devastating impact on the value of the

1 real estate?

2 A. Of course, yes.

3 Q. And the membership -- unsold memberships would have no
4 value?

5 A. Not if we're not operating.

6 Q. Would it jeopardize the ability, at least through a
7 plan, to pay the existing unsecured creditors?

8 A. Oh, absolutely.

9 MR. PATTEN: Thank you, that's all I have.

10 THE WITNESS: Thank you.

11 THE COURT: Who would like to cross-examine
12 first?

13 THE WITNESS: "First"?

14 THE COURT: Well, I hate to say that, but there
15 were a number of attorneys that -- (inaudible, talking over
16 each other.)

17 THE WITNESS: Okay.

18 MR. ALTER: Your Honor, I don't know if anybody
19 else intended to cross-examine the witness, so I don't mean
20 to commandeer the podium first if there's others that
21 wanted to cross-examine.

22 MR. CHEHI: I can, I can go first if you would
23 like, Your Honor. I just have a few short questions.

24 Or you can, either way.

25 MR. ALTER: I think, I think the attorney is

1 going to be cross-examining towards the end of favoring the
2 DIP proposal, so I would assume that maybe -- that I should
3 wait until after you're concluded.

4 Does that make sense, Your Honor?

5 THE COURT: Absolutely. You may proceed.

6 MR. CHEHI: Good afternoon, Your Honor. Mark
7 Chehi from Skadden-Arps for Credit Suisse.

8 CROSS-EXAMINATION

9 BY MR. CHEHI:

10 Q. And good afternoon, Ms. Blixseth. I'd like to ask you
11 a few questions.

12 Do you personally owe any money to CrossHarbor?

13 A. Yes, I do.

14 Q. And how much is that?

15 A. Thirty-five million.

16 Q. And what is the basis of their claims against you?

17 A. In order to -- the financing that I had put together to
18 take out the MSA. Do I need to say "marital settlement
19 agreement?

20 Because of the early markets kind of turning, the bank
21 that I had that was providing me with that funding wasn't
22 able to provide it in time. We felt that - CrossHarbor
23 felt, as well - that it was -- we needed to get this
24 resolved. So they were kind enough to put together the
25 financing for me to be able to pay what I needed to pay to

1 get Tim's interest out of the Yellowstone Club and BGI, and
2 some additional things that needed to be paid in order for
3 Tim to be completely out of it. And so that's what they
4 did.

5 Q. Did they, did CrossHarbor advance funds to you that
6 you, in turn, used to finance the operations of the debtor?

7 A. No -- oh, you know, actually, that's not right. Part
8 of, part of the funds that they provided was --
9 \$4.4 million of that went into the Yellowstone Club,
10 directly into the operations of which I owe now
11 CrossHarbor. And part of those funds did pay a payment to
12 Credit Suisse.

13 Q. And is their claim against you secured in any manner?

14 A. It's secured, it's secured by some separate personal
15 property not including anything to do with the Yellowstone
16 Club.

17 Q. Prior to the petition date, did CrossHarbor propose any
18 transactions to you whereby CrossHarbor would become an
19 owner of the company of the debtors?

20 A. CrossHarbor and Yellowstone Club entered -- took a look
21 at the picture, big picture of Yellowstone Club in the --
22 for the future. They put a great business plan together
23 and, again, have more information than I did in the last
24 two years. We ended up - I don't know how to word this
25 correctly - making nice because there was some contentions

1 because they didn't get the sale -- or the purchase of it.
2 And there were some, some areas that could have caused
3 concern for Yellowstone Club. Sam Byrne and I sat down
4 with his team, my team, and we actually came up with a very
5 good plan to have some joint ventures between Yellowstone
6 Club and CrossHarbor and make everything okay.

7 Q. Now, you've mentioned that CrossHarbor helped develop a
8 business plan for the club?

9 A. No. They shared with me the business plan that they
10 were going to use if they were the purchaser of the club.
11 And that was very helpful to me coming in, to give me
12 information that would have taken me months to come, to
13 come up with, so -- (pause.)

14 Q. Did the proposed -- the transactions or transaction
15 proposed by CrossHarbor involve Discovery Land Company?

16 A. No. I had been speaking with Discovery Land Company
17 for well over a year when, when I wasn't sure who was going
18 to be trying to sell Yellowstone Club. I have been talk --
19 I know the Mike Meldman, the president of Discovery. We
20 had been talking with him quite awhile. And I brought them
21 up when Sam and I were looking at doing some joint ventures
22 with the Yellowstone Club.

23 Sam had about three different people, management-type
24 on his list, if he were going to by Yellowstone Club.
25 Discovery was one of those. I told him that Discovery was

1 my preference, and he asked me to talk to the other two
2 people that were his preference. We ended up not doing
3 that; we ended up negotiating with Discovery, and they came
4 on board as management.

5 Q. So in connection with your selection of Discovery as
6 the management of the, of the company, that was, in part, a
7 decision reached with the involvement of CrossHarbor?

8 A. Well, I thought CrossHarbor should be involved because
9 of the joint ventures we were going to be doing, because
10 Discovery wouldn't just be managing the operations and the
11 F and B and the ski, and all of that; Discovery was going
12 to be managing the sales and marketing. So CrossHarbor,
13 with our joint venture, is doing to the vertical and doing
14 the extensive development that would be joined together.
15 It would only be prudent that they would be involved in
16 that, that decision.

17 Q. Did CrossHarbor's proposals of a transaction of some
18 sort include a role for Discovery?

19 A. Not originally.

20 Q. What about most currently prior to the filing of these
21 cases?

22 A. Well, well before filing these cases. I mean it --
23 when I say "not originally", when they brought their idea
24 for some joint ventures that would be beneficial to both
25 Yellowstone Club and Discovery -- I mean, excuse me,

1 Yellowstone Club and CrossHarbor, Discovery wasn't part of
2 that. I'm the one that suggested Discovery and asked them
3 to consider that as the one and only rather than the other
4 two.

5 Q. But most recently in the past month or two, have your
6 discussions about a possible transaction with CrossHarbor
7 included a Discovery participation in that transaction or
8 the -- on the other side of the transaction?

9 A. Well, Discovery is already part of it. So I'm not
10 clear on your question, because Discovery is already
11 involved and is the manager of Yellowstone Club.

12 Q. Okay, very good. And for how long has Discovery been
13 managing the company?

14 A. Just shortly after we started working on the MOU,
15 within a couple of weeks of me taking over. And so just I
16 think they started, actually, September 1.

17 Q. Of this, of this year?

18 A. Correct.

19 Q. So just in the last few months?

20 A. Right after I took, right after I took over, yes.

21 Q. And the MOU you referred to is what?

22 A. Oh, sorry, I keep using initials. That's the agreement
23 we put together prior to putting a full contract together
24 because we want -- we didn't want any lag time. And to try
25 to put a full contract together we thought was going to

1 take too long, so we started operating under an MOU.

2 Q. Has Discovery been paid any money to manage the
3 companies during this period since they became involved in
4 managing the companies?

5 A. Unfortunately, they have been on the list of not being
6 able to be paid, as well.

7 Q. Was there a promise reached to pay them anything in
8 connection -- prior to the commencement of the cases? In
9 other words, do they have an outstanding claim at this
10 time?

11 A. Yes, they would.

12 Q. And what amount of claim is that?

13 A. I really don't know.

14 Q. Why is that?

15 A. Because there's certain things that are based on
16 percentages of sales and certain things that are based on
17 the people they had on the ground, and those kind of
18 things. So there's -- now, now we're, we're just doing a
19 fee base so we're going to be able to do that going
20 forward. Because with the situation between the last two
21 years of the divorce and the litigation and then this, we
22 can't really predict them to be able to be paid --
23 (inaudible.)

24 Q. So Discovery has been, been working for the last two
25 months without any payment?

1 A. To the best of my knowledge.

2 Q. Now, you mentioned that CrossHarbor proposed a DIP
3 financing to, to you?

4 A. Yes, they did.

5 Q. And I think you also mentioned that that financing
6 proposal included terms requiring a prompt sale of the
7 company.

8 A. At the end of 13 weeks.

9 Q. And what, what exact date would it be that they -- the
10 terms of the CrossHarbor DIP financing would require the
11 closing of such a sale?

12 A. I believe it was February 13th, somewhere in that --
13 (pause.)

14 Q. And you also testified that they required confirmation
15 of a plan of reorganization by February 13th of 2009?

16 A. Correct.

17 Q. So what you're saying is that a condition of their
18 debtor-in-possession financing was that the company either
19 confirm a plan by February 13th or consummate a sale of
20 substantially all of its assets?

21 A. Consummate -- or I can't say "consummate", but
22 immediately start a proceeding for sale of -- yes.

23 MR. CHEHI: Those are the only questions I have,
24 Your Honor.

25 THE COURT: Thank you.

1 CROSS-EXAMINATION

2 BY MR. ALTER:

3 Q. Good afternoon, Ms. Blixseth.

4 A. Good afternoon.

5 Q. My name is Jonathan Alter, and I represent the ad hoc
6 group of members. I believe you are familiar with me. We
7 have spoken before.

8 A. Yes.

9 Q. Is that correct?

10 A. That's correct.

11 Q. Ms. Blixseth, you had testified briefly with respect to
12 when payroll was due. Can you clarify for me, so the
13 record is clear, when is the next payroll check due to the
14 employees?

15 A. I'm going to have to answer that in a, in a couple of
16 ways. We paid -- we scraped up enough money to pay them on
17 Friday because of knowing that we couldn't pay once we
18 filed. Normally, they're paid every two weeks. Under
19 this, we're proposing in our budget that we pay them every
20 Friday so that, that there's no lag time, to try to help
21 the employees not have any lag time in that. So if you
22 answer post or pre, it's different.

23 Q. So postpetition, the next payroll check is due this
24 Friday or the following Friday?

25 A. This Friday.

1 Q. This Friday. What other material amounts are coming
2 due for the club in the next three business days?

3 A. The specifics are listed in the budget. We've got
4 some - (inaudible, static in microphone) - some important
5 things for being in Montana with our weather turning to
6 what we'd like it to be so that we have some, some very
7 immediate needs that do have to do with utilities and that
8 kind of thing.

9 Q. How many members are there in the club?

10 A. Around 360-ish.

11 Q. Are members required to place a membership deposit with
12 the club?

13 A. Yes, they are.

14 Q. What is the amount of the membership deposit?

15 A. Currently, it's 300. It was 250.

16 Q. And is it fair to say that over the course of the life
17 of the club, the club has collected approximately
18 \$88 million in member deposits?

19 A. That would be pretty close.

20 Q. What about with respect to annual dues? Are annual
21 dues required of the members?

22 A. Yes, they are.

23 Q. What is the amount of the annual dues required of the
24 members?

25 A. You know, this is -- I think I'm going to say 16,000,

1 but I think it's 18,000 now. Somebody nodded out there.
2 Because it went up while, while I was not involved the last
3 two years, so --

4 Q. Understood. And the collective amount of dues on
5 behalf of all the members on an annual basis is
6 approximately \$5 million a year?

7 A. Approximately.

8 Q. Thank you. What is the outstanding amount of the debt
9 owed to CSFB, as agent, for the prepetition lenders?

10 A. It's around 305 - 306 million.

11 Q. And you testified before that the value of the assets
12 of the Yellowstone Club and its debtors were a certain
13 amount, but what is the amount of the value of the
14 collateral that is held to secure the loan of the
15 prepetition lenders? Is it the same amount?

16 A. It's the same amount, yes.

17 Q. And that amount was what, just to refresh your
18 recollection with the Court?

19 A. Seven hundred seventy-eight million.

20 Q. So the -- if I understand correctly, the club has
21 received about \$5 million a year from membership dues,
22 approximately \$88 million in capital from membership
23 deposits, and has received approximately \$375 million of
24 funds through CSFB, as agent, over the course of the last
25 several years, correct?

1 THE COURT: Yes?

2 UNIDENTIFIED SPEAKER: May I interpose one point,
3 Your Honor? It's not CSFB; it's just Credit Suisse.

4 MR. ALTER: Oh, I'm sorry, my apologies; Credit
5 Suisse.

6 THE WITNESS: Yes.

7 Q. (By Mr. Alter) And based upon the fact that you were,
8 as in your own words, frozen out, do you have any idea
9 where all that money went to?

10 A. To answer your specific question: All? No.

11 Q. Thank you. And during that period of time, CS was
12 monitoring the outstanding loan that it provided to the, to
13 the debtors?

14 A. I assumed it was because prior to the two years, there
15 were certain regulations and things they had, audits and
16 those kind of things. So I assume that went on.

17 Q. Let's talk a little bit about the financing that CS has
18 offered. What is the amount of the financing? I'm not
19 certain I heard that number testified to.

20 A. 4.6.

21 Q. Out of that \$4.6 million of financing, do you know how
22 much of the money is going to the debtors and how much is
23 going to CS to provide the financing?

24 A. I believe, from my calculations, it's about 25 percent
25 of that for Credit Suisse to get the CRO on board. And

1 there are legal fees and a lot of other expenses and fees
2 in there.

3 Q. Well, let's talk about that number, because it's a
4 rather large number. Do you recall the budget that you
5 testified to before in direct examination?

6 A. Yes.

7 Q. And you, you obviously reviewed the budget and
8 considered the budget in selecting the appropriate
9 financing.

10 A. Yes.

11 Q. Do you understand that the amount of legal professional
12 fees of the lender that is being asked to be paid pursuant
13 to this \$4 million, or so, DIP financing is \$742,600?

14 A. Yes.

15 Q. That's professional fees for whom?

16 A. Credit Suisse.

17 Q. With respect to the agent fee, what is the agent fee
18 that is required by virtue of this DIP financing?

19 MR. PATTEN: Your Honor, let me object. If she's
20 going to be questioned about the line items on the budget,
21 she ought to be provided a copy of it.

22 MR. ALTER: Oh, absolutely. I apologize. I
23 thought she simply knew them. But I would be happy to
24 provide her with a copy.

25 THE WITNESS: I know the, I know the totals. But

1 in the weeds of separating, I probably -- I don't want to
2 give the wrong answer.

3 THE COURT: If you have a copy, you may approach
4 and present that to her.

5 THE WITNESS: What size font is this going to be?

6 THE COURT: Would you like that marked as an
7 exhibit?

8 MR. ALTER: Sure. It's actually an exhibit to
9 the pending motion before the Court, so it's already got --
10 it's a matter of public record. But if Your Honor thinks
11 it's easier to mark it as an exhibit, I'm happy to do so.

12 THE COURT: Let's mark it. That raises an issue.
13 When we're talking about exhibits to motions, I expect all
14 the exhibits to be presented at the time of hearing or
15 trial.

16 THE WITNESS: What size font is that that you're
17 going to hand me? I might need my glasses.

18 THE COURT: I'm going to mark this as Exhibit 1.
19 It is the management cash weekly DIP budget, dated - with
20 fax number - November 9, 2008.

21 THE WITNESS: Let me look and see; I'll tell you.
22 Oh, no, I can see it okay.

23 Q. (By Mr. Alter) Okay.

24 A. Sorry. I thought at my age, I might need my glasses
25 because I wasn't sure what size font it was.

1 Q. I didn't know whether I needed to fetch your glasses.

2 A. I can see this okay.

3 Q. All right. And I think we were talking about the
4 \$50,000 figure. Do you know what that \$50,000 figure is
5 that is contained on the budget?

6 A. I need to -- where, where I'm looking here.

7 Q. What I'm --

8 A. Sorry, I'm --

9 Q. You're fine. What I'm drawing your attention to is the
10 varies fees that are associated -- (inaudible, talking over
11 each other) --

12 A. I got you. Got it, hm-hmm.

13 Q. -- proposed DIP loan.

14 What is your understanding of the \$50,000 figure that's
15 contained within the budget?

16 A. To be honest with you, we - Yellowstone Club and
17 Discovery - put the budget together, presented it to Credit
18 Suisse, and Credit Suisse came back and told us the numbers
19 that they would require in order to be able to do the DIP
20 loan and what their fees and costs would be. And we simply
21 plugged them in.

22 Q. With respect to the DIP loan interest and fees, what is
23 your understanding of the amount of DIP loan interest and
24 fees during the supposed three life -- three-week life of
25 the DIP facility?

1 A. Two hundred and -- it's either thirty-eight or
2 seventy-eight.

3 Q. It wasn't meant to be an eye test.

4 With respect to the trustee fees, obviously we
5 understand what those are for the U.S. Trustee's Office;
6 and court fees.

7 The following line is estimated CRO fees. What is your
8 understanding of the estimated CRO fees, chief
9 restructuring fees, through the life of this DIP facility?

10 A. One hundred fifty thousand a month.

11 Q. And so we are clear, the DIP facility terminates in no
12 more than three weeks, correct?

13 A. If this one doesn't go forward, yes.

14 Q. No. If, if --

15 A. This one, yes.

16 Q. This DIP facility, if approved, terminates in no more
17 than three weeks?

18 A. Correct.

19 Q. In fact, there are conditions in the DIP that may, may
20 result in the DIP being terminated earlier than three
21 weeks, based upon defaults and the like.

22 A. I think that would be in any DIP loan. So there could
23 be defaults, yes, but -- (pause.)

24 Q. What is your understanding of the interest rate for the
25 DIP?

1 A. I believe it was 15 percent.

2 Q. And what was your understanding of the -- and what is
3 your understanding of the interest rate that was called for
4 by the DIP proposed by CrossHarbor?

5 A. Seventeen percent.

6 Q. So it was simply 2 percent more?

7 A. Correct.

8 Q. Now, you testified a bit about the fact that the
9 CrossHarbor DIP was a priming lien, it required a priming
10 lien. Do you remember that discussion?

11 A. Yes, I do.

12 Q. Okay. Is it your understanding that the CS DIP also
13 requires a priming lien over lenders that did not agree to
14 participate in this DIP?

15 A. I was not aware of that. It's been mentioned to me
16 today, but I was not aware of that.

17 Q. Okay. Do you have any basis for your, for your
18 understanding -- and I believe it's your understanding --
19 that there has been consent from all lenders to the
20 prepetition -- all prepetition lenders to this DIP, to the
21 priming?

22 A. I have, I have information that Credit Suisse has done
23 it. I don't -- I have not had conversations with all the
24 bondholders.

25 Q. You testified that it was important to you that CS had

1 agreed to negotiate. Do you recall that testimony?

2 A. Yes, I do.

3 Q. Did CS indicate to you that they refused to negotiate
4 in the event that you did not agree to do their DIP?

5 A. They indicated to me that they would, would prefer they
6 did -- I did their DIP in order to have time to do a more
7 in-depth evaluation of what, what we needed going forward.
8 If they -- I hope that answered.

9 Q. So is it, is it fair to say that the purpose of this
10 DIP, perhaps, from CS's standpoint, as far as you
11 understood it, was to allow a three-week due diligence
12 period to understand whether they would provide further
13 funding?

14 A. Not only, not only that -- yes, that is part of my
15 understanding. But not only that, but to -- they knew that
16 I was strongly in favor of the Credit -- CrossHarbor DIP.
17 And so it was, it was their offer to let the CrossHarbor
18 people come to the table and explain what their DIP was,
19 let the members come to the table and explain a little more
20 in depth of actually what Yellowstone Club is, and that
21 kind of thing.

22 Q. And at some point -- you just testified that at some
23 point, you were strongly in favor of the CrossHarbor DIP.
24 Was it material to you CS told you that they would fight
25 vigorously to oppose any priming lien against their, their

1 claim?

2 A. That definitely was on my mind.

3 Q. Yet the existing loan actually results in a priming
4 lien over nonparticipating lenders in their own facility?

5 A. Yeah. And I was not aware of that.

6 Q. The existing DIP order provides a release by the
7 debtors of CS. Are you aware of that?

8 A. Yes.

9 Q. What analysis was performed by the debtors in
10 connection with determining that it was appropriate to
11 release CS at this point in time?

12 A. It felt like the best option for expediting what we
13 needed to do in an emergency situation.

14 Q. Was there any claims that you are aware of that was
15 released in connection with the release language in the
16 documents?

17 A. No.

18 Q. Was any analysis performed to reach that conclusion?

19 A. We read the, we read the DIP terms, and we went back
20 and forth on a few things and basically did an analysis,
21 yes.

22 Q. So is it fair to say that that was a condition to the
23 DIP financing that they needed to be released from any
24 claims against them, both prepetition and postpetition?

25 A. It was definitely one of their terms.

1 Q. What other potential lenders were solicited for
2 financing of the bankrupt debtors?

3 A. Besides Credit Suisse -- I mean besides CrossHarbor?

4 Q. Besides the two entities that are before the Court at
5 this point in time, the ones that have been discussed by
6 the Court -- with the Court, CrossHarbor and CS.

7 A. We didn't -- none others. The market was not in a
8 position where we felt that we had a -- unless somebody had
9 real insight or kind of a skin in the game already, we
10 didn't think we had any options for that.

11 Q. There's been some discussion of the fact that, that it
12 was a negative on the CrossHarbor DIP that come mid
13 February, that there would be a requirement of the sale.
14 Do you recall that testimony?

15 A. Yes, I do.

16 Q. What is your understanding of what could potentially
17 happen to this debtor in three weeks if CS does not agree
18 to further -- a further DIP and there is no further
19 financing? What would happen to the debtor at that time
20 without financing?

21 A. Well, I -- I hate to answer it the way I'm going to
22 answer it, but I wouldn't let that happen because I would,
23 I would -- CrossHarbor has a DIP that they're offering to
24 do, and I would bring that to the Court.

25 Q. But CrossHarbor has a DIP that it suggested doing at

1 this point in time. There was no assurance in three weeks
2 that either Credit Suisse or CrossHarbor will be available
3 to provide further long-term financing for this debtor. So
4 isn't it the case that in three weeks, there could be a
5 sale?

6 A. That could always be an option. But to finish the,
7 the -- my answer is that a lot can be done in three weeks
8 with people that care about Yellowstone Club the way they
9 do and are committed to it. Credit Suisse is obviously
10 putting up money that they wouldn't put up. CrossHarbor is
11 not walking away saying that they wouldn't still come back
12 with their DIP. So I feel very confident in the next few
13 weeks we'll have that additional DIP financing.

14 Q. And with respect to the impending discussions with
15 Credit Suisse, do you have any agreement whatsoever that
16 they will agree to provide any further funding other than
17 the funding that's set forth in this interim order?

18 A. No, I do not.

19 MR. ALTER: I have nothing further, Your Honor.

20 CROSS-EXAMINATION

21 UNIDENTIFIED SPEAKER:

22 Q. Ms. Blixseth, since Counsel delved into a few of the
23 details of the CrossHarbor DIP, at least, let me ask you:
24 Was it your understanding that the CrossHarbor DIP proposal
25 was accompanied by any budget?

1 A. Oh, yes, it was accompanied by a budget.

2 Q. Was there one attached to the term sheet that
3 CrossHarbor proposed?

4 A. Oh, yes.

5 Q. And which budget was that?

6 A. It was a 13-week budget that, that Discovery and
7 Yellowstone Club put together.

8 Q. And what was the initial amount of funding under the
9 CrossHarbor DIP financing proposal that would be made
10 available to the company?

11 A. Eighteen million dollars.

12 Q. Is it your understanding or not that the initial
13 funding was a \$5 million increment?

14 A. It could have been. It could come in that. There was
15 some, there was some structure in there for submitting the
16 budget, showing variances if we had any variances from the
17 budget. But it would fall under the same things we'd have
18 to do under bankruptcy anyway, so it wasn't, it wasn't an
19 issue in my mind.

20 Q. Are you saying that you don't recall whether or not the
21 CrossHarbor DIP included an initial advance of \$5 million
22 for -- a \$5 million funding of the budget rather than the
23 entire full \$18 million amount?

24 A. I do recall, and I do recall that it was in increments
25 based on the budget. And we would, we would -- they had an

1 instrument put that they would have -- as, as we went along
2 for the weeks, we would request the funds. We would show
3 that that's the -- where all the money was being used in
4 the budget, much the same we're going to have to for the
5 bankruptcy; and they would grant those funds in increments.
6 But the overall DIP was 18 million.

7 Q. And do you recall that there was an original issued
8 discount feature of the DIP proposal?

9 A. Can you be more specific?

10 Q. Do you recall that there was an amount approximating
11 \$538,000 that was attributable or equivalent to a 3 percent
12 fee payable to CrossHarbor on account of its DIP financing
13 proposal?

14 A. I have to be honest with you: There's been so many
15 proposals and so many drafts, I don't -- I can't honestly
16 answer that one.

17 Q. Okay. Is it your understanding that the release of
18 Credit Suisse that's provided by the debtors would not be
19 binding upon a creditors committee or other creditors but
20 would apply only to the debtors themselves as borrowers?

21 A. Yes.

22 UNIDENTIFIED SPEAKER: Thank you.

23 THE COURT: Mr. Patten.

24 MR. PATTEN: (Inaudible, out of range of
25 microphone) -- Your Honor. I don't know if there's anybody

1 else that wants to go.

2 MR. BUTLER: Actually, Your Honor -- (inaudible,
3 our of range of microphone.)

4 THE COURT: Oh, Mr. Butler -- oh, before we
5 proceed, Mr. Alter, did you wish to offer Exhibit 1?

6 MR. ALTER: Your Honor, yes, I will offer
7 Exhibit 1. But, again, I note for the record that it is,
8 it is part of the motion that is -- that has been submitted
9 to the Court. And it's also an exhibit to the interim
10 order upon which the, the proposed financing is based.
11 But, yes, I will ask that that be introduced as Exhibit 1.

12 THE COURT: Any objection?

13 MR. PATTEN: No objection.

14 THE COURT: Exhibit 1 is admitted.

15 MR. ALTER: Thank you, Your Honor.

16 EXHIBIT NO. 1 ADMITTED INTO EVIDENCE

17 THE COURT: Mr. Butler.

18 MR. BUTLER: Yes, Your Honor. And, again, my
19 application for pro hac is pending before the Court.

20 CROSS-EXAMINATION

21 BY MR. BUTLER:

22 Q. Yes, ma'am, my name is Lynn Butler. I represent the
23 Montana Department of Revenue. I have three quick areas
24 I'd like to ask you about.

25 In your understanding of the facility that's before the

1 Court, are you aware that there's a carve-out provision for
2 certain payments? Are you aware of that at all?

3 A. A carve-out for certain payments, or --

4 Q. Payments to your, your attorneys, the debtor attorneys,
5 and payments to the U.S. Trustee's Office. Are you aware
6 of --

7 A. Yes, I am.

8 Q. Is it your understanding that the case will not go
9 forward if that carve-out is not in place?

10 A. The case will not go forward --

11 Q. Yes.

12 A. -- or the DIP loan would not --

13 Q. The DIP loan, let's start there.

14 A. The DIP loan, yes.

15 Q. So it's the lender's requirement that there's a
16 carve-out for the debtor attorney in the U.S. Trustee's
17 Office?

18 A. That's correct.

19 Q. Okay. And as Counsel asked earlier, there is a large
20 amount of releases and stipulations that the debtor is
21 making as regard to Credit Suisse within the motion.
22 You're familiar with those?

23 A. Yes, I am.

24 Q. Do you know of any investigation that has been made as
25 to the past activity of Credit Suisse as it relates to the

1 debtor?

2 A. No.

3 Q. Thank you. And, lastly, you said the payroll -- the
4 monthly payroll budget's about \$600,000?

5 A. Hm-hmm.

6 Q. Which one's the employer entity out of the four, do you
7 know?

8 A. YMC.

9 Q. YMC. And on the budget, it wasn't clear. It showed
10 payroll and it showed payroll expenses. Are the
11 postpetition payroll withholding taxes part of the, part of
12 the items to be paid?

13 A. Yes, they are.

14 Q. And who's responsible for making payments of the wages
15 and taxes?

16 A. Yellowstone Club will be, under the direction of
17 whoever has the DIP in the court right now.

18 Q. Okay, thank you very much.

19 A. Hm-hmm.

20 MR. BUTLER: That's all, Your Honor.

21 THE COURT: Thank you. Mr. Patten -- oh,
22 Mr. Cuffe.

23 MR. CUFFE: Your Honor, I have three quick
24 questions.

25 THE COURT: Okay.

1 MR. CUFFE: Well, at least I hope they're quick.

2 CROSS-EXAMINATION

3 BY MR. CUFFE:

4 Q. Ma'am, my name is Matt Cuffe. I think I've seen you in
5 Virginia City a couple of times.

6 A. Yeah.

7 Q. I represent Mike Snow. Three quick questions for you.

8 You mentioned earlier that there was ongoing litigation
9 during the divorce and all of those things. Do you
10 remember that?

11 A. I do.

12 Q. And you were personally sued in that litigation,
13 weren't you?

14 A. I was.

15 Q. And some of the allegations in that complaint related
16 to the use of proceeds from the prepetition loan from CS,
17 didn't they?

18 A. Correct.

19 Q. And those allegations included that you personally
20 benefitted from those loan proceeds improperly, correct?

21 A. They, they had -- it was put in there as Tim Blixseth
22 and Edra Blixseth, so, yes, I was part of that.

23 Q. Right. And there's been allegations that a CD in your
24 name for in excess of \$1 million was funded with those
25 proceeds, correct?

1 A. I'm, I'm not familiar with that.

2 Q. You don't recall that?

3 A. No.

4 MR. CUFFE: Okay, that's all I have.

5 THE WITNESS: In my name?

6 Q. (By Mr. Cuffe) Yes, ma'am.

7 THE COURT: You only have to answer --

8 THE WITNESS: Okay.

9 THE COURT: -- questions that have been asked.

10 THE WITNESS: I can't ask back?

11 THE COURT: You can't ask back. This is not a --

12 THE WITNESS: Sorry.

13 THE COURT: You can do that during the
14 negotiations.

15 THE WITNESS: Okay.

16 REDIRECT EXAMINATION

17 BY MR. PATTEN:

18 Q. Ms. Blixseth, was CrossHarbor willing to commit to any
19 DIP financing beyond this 13-week period?

20 A. Not at the time we were negotiating.

21 Q. Did you request them to commit beyond the 13-week
22 period?

23 A. Yes, I did.

24 Q. And they refused?

25 A. They would not commit to anything past the 13 weeks.

1 Q. Are you familiar, in general, with the condition of the
2 financial markets?

3 A. I am too familiar.

4 Q. Okay. And based on your familiarity, is that -- you
5 focused your attention on CrossHarbor and Credit Suisse DIP
6 financing --

7 A. Correct.

8 Q. -- and not some other potential source of financing?

9 A. I didn't feel in this market that unless somebody else
10 was abundantly familiar with the Yellowstone Club or had
11 some already, like I said, skin in the game, that we could
12 get any other financing.

13 Q. Do you believe that you have -- strike that.

14 Mr. Alter asked you about the payment of membership
15 dues?

16 A. Correct.

17 Q. Are those dues paid at a certain time during the year?

18 A. Yes. In fact, the -- part of the dues will be coming
19 up to be paid in December.

20 Q. What, what percentage of the dues will be due in
21 December?

22 A. Half.

23 Q. Okay. And the other half is due when?

24 A. Sometime in the summer.

25 Q. Okay. So the approximate \$5 million in dues aren't

1 available to the Yellowstone Club today?

2 A. No, they're not.

3 Q. They won't be available next week or the week after?

4 A. No, they will not.

5 Q. And, at best, half of them will be received sometime in
6 December?

7 A. Well, they will be if the members think that the club
8 is going to be open and available to them.

9 Q. But that's not money that Yellowstone Club has
10 available to fund its operations for the next three weeks?

11 A. No, it's not.

12 Q. Now, do you understand, with respect to the CrossHarbor
13 proposal, whether the 363 sale was to be held in
14 February or was to -- the process was to start in February?

15 A. It was my understanding that, that it started
16 immediately on that date. So, so one could not logically
17 think that you wouldn't have to start marketing prior to
18 that in order to, to effect a sale right after that date.

19 Q. Okay. And CrossHarbor --

20 A. (Inaudible, talking over each other) -- concern.

21 Q. -- CrossHarbor was not committing to provide any
22 financing for any time after the February 13th, correct?

23 A. No, they were not.

24 Q. So everything would have to shut down in the middle of
25 the ski season before the sale. Is that the timing on the

1 CrossHarbor proposal?

2 A. Yes.

3 Q. Thank you. You're familiar with the release language

4 Mr. Alter asked you about in the Credit Suisse --

5 A. Yes, I am.

6 Q. That Credit Suisse has released?

7 A. Yes.

8 Q. And does that -- to your understanding, does that

9 affect anybody other than the debtors in this case?

10 A. No.

11 Q. Okay. So trustees, anyone else can continue?

12 Creditors can assert whatever claims there may exist?

13 A. It's my understanding it only affects me.

14 MR. PATTEN: Okay, that's all. Thanks.

15 THE COURT: You know, Mr. Patten, could I have
16 you just -- or maybe you can just answer it, or maybe some
17 questioning. I just want to clarify: When we speak of
18 "Yellowstone Club", are we just collectively talking about
19 all four entities?

20 MR. PATTEN: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. PATTEN: And I should ask Ms. Blixseth.

23 Q. (By Mr. Patten) When, when you've been testifying
24 about "Yellowstone", you're talking about the four entities
25 that are in bankruptcy right now?

1 A. And that's why I've been using the word the
2 "Yellowstones", because I was doing everything; so, yeah.

3 MR. PATTEN: Okay, thank you.

4 THE COURT: You may step down.

5 THE WITNESS: Thank you.

6 THE COURT: Next witness?

7 MR. PATTEN: And I have no further witnesses,
8 Your Honor.

9 THE COURT: I guess I have a few questions, and
10 maybe they go to the attorneys as well as to anyone. I see
11 in here in the proposed -- now, and I don't know that I've
12 got the latest version of the interim order because there
13 were a flood of interim orders that were floating through
14 the, the cyberspace. And so I have one that I was
15 reviewing that had been filed either yesterday or the day
16 before which probably has, has some changes. But to be
17 quite honest, I was uncertain when I started opening up the
18 versions which was, which was the most current and which
19 one were you going to be proposing and submitting to me.
20 So my questions are going to be based upon an earlier
21 version.

22 MR. PATTEN: Okay.

23 THE COURT: But in here on page 6 of the version
24 I'm looking at, there's a reference that's -- and these are
25 findings of fact that I'm making, that the terms of the DIP

1 term sheet and use of cash collateral were for fair and
2 reasonable. I don't know if I've had any testimony that
3 allows me to make that finding. I mean because here's my
4 point going to the budget: How is this -- and let me
5 preface it with another question.

6 Does the lender anticipate filing an application
7 for these fees, professional fees of 742.6 -- (inaudible,
8 talking over each other)?

9 MR. PATTEN: Your Honor, it's my, my position
10 that any professional fees, whether they're occurred by
11 the, by the lender or any other creditor as well as the
12 debtor, have to submit their fees to this Court for
13 approval.

14 THE COURT: Well, that certainly would be my
15 understanding, but I wanted to know what their attorneys
16 are contemplating here. Because then I -- that paragraph
17 really troubles me because you're suggesting to me that by
18 approving this interim agreement, that I'm concluding that
19 the terms of the term sheet and use of cash collateral were
20 for fair and reasonable. I don't know that yet because I
21 don't know that these fees are reasonable.

22 MR. CHEHI: Your Honor, the -- let me explain as
23 best I can. And we can also -- there's a financial advisor
24 that we have retained who also could be qualified today as
25 an expert to speak to Your Honor about the status of terms

1 of debtor-in-possession financing that are available in the
2 market today to the extent it's available. And he would be
3 prepared to testify as to the interest rate and the other
4 terms and give Your Honor a view of those issues.

5 But I need to correct the record, and I can do
6 that based upon the papers as opposed to the, you know, the
7 questioning of the witness who is, you know, a lay witness.
8 The alleged, you know, \$700,000-some of fees that allegedly
9 are coming to Credit Suisse is a, is a gross overestimate.
10 What we have, Your Honor, in the first instance is a
11 requirement that the debtors engage a CRO, a chief
12 restructuring officer; in other words, someone who has
13 competence in financially restructured companies, managing
14 these situations, and who is an independent third party.
15 That was a requirement that we discussed with the borrowers
16 from Day 1, and it was a -- put that inside the term sheet.
17 But it's not a CRO that's being retained by or selected by
18 Credit Suisse. And so the \$150,000 cost of that is a cost
19 of providing independent management to the debtor's estate.

20 THE COURT: But we haven't seen any employment
21 application at this point for such a person, right?

22 MR. CHEHI: No. But we understand that the
23 debtors have selected a Mr. Ron Greenspan from a firm
24 called "FTI", which is an advisory firm. And he is
25 well-qualified in real estate and troubled-company workouts

1 and restructurings and bankruptcy reorganizations. He is
2 the person, as we have been told - and we haven't, you
3 know, talked to him directly about this - is going to be
4 engaged or is already engaged to assist the debtors'
5 management in working through the difficult bankruptcy
6 issues that they're confronting at this time.

7 And, you know, that's very important to us, Your
8 Honor, because the circumstances in this case are -- call
9 out for some great concern about the debtor's current
10 management. Its management since at least September 1st,
11 as the witness testified --

12 THE COURT: This is Discovery?

13 MR. CHEHI: Well, Discovery Land Company and
14 CrossHarbor, Your Honor, are both, on information and
15 belief, given our conversations with CrossHarbor's
16 bankruptcy counsel a couple weeks ago -- and, you know,
17 various documents that were provided to us outlying
18 proposed transactions between the debtors prepetition and
19 CrossHarbor included, again, a change in control of the
20 company to CrossHarbor, and it involved a participation in
21 some manner or another as a principal and not simply as a
22 management company of Discovery.

23 And upon information and belief, Your Honor, we
24 believe that these companies have effectively been managed
25 by and run by CrossHarbor directly and indirectly through

1 Discovery for CrossHarbor's self-interested benefit in
2 connection with a transaction that has admittedly been
3 under discussion for some months and which was admittedly
4 discussed with all the other parties, including us, Your
5 Honor, prior to the filing of the petition.

6 Further, upon information and belief, and I don't
7 think it's inconsistent with the witness's testimony --

8 THE COURT: Just a moment. Mr. Alter.

9 MR. ALTER: Your Honor, my point was simply going
10 to be that this has crossed so far over the line of what is
11 appropriate argument in connection with an evidentiary
12 component of a hearing. If there's a witness that can
13 testify to -- (inaudible, talking over each other.)

14 THE COURT: Well, anything that, anything that's
15 argument is not evidence.

16 MR. ALTER: And I think that's the point. We're
17 getting a lot of "upon information and belief" that I
18 haven't -- I hear no witnesses testifying to, and I have no
19 basis to know that this is true at all.

20 UNIDENTIFIED SPEAKER: And are you representing
21 CrossHarbor?

22 MR. ALTER: I am not, Your Honor. I am not, Your
23 Honor.

24 THE COURT: He's not the "Honor"; I am.

25 MR. ALTER: I know, but I -- Counsel. But I

1 think the judge asked me a question, so I was responding.

2 THE COURT: I mean I view this strictly at this
3 point as argument, which I'm not going to take as evidence.

4 UNIDENTIFIED SPEAKER: And that's understood,
5 Your Honor. And I'm not, I'm not testifying. All I can do
6 is tell you what we've heard here today and what is of
7 record and what would very clearly become of record in any
8 further scrutiny of the relationships, the prepetition
9 relationships between the party. And this goes back to the
10 need for an independent third-party expert manager to come
11 in and to ensure the proper oversight internally of these
12 companies, to act as an independent fiduciary in connection
13 with the existing equity owner of the company and its
14 existing management structure.

15 THE COURT: Well, but let's get back to the fees
16 and what I'm, I'm finding is fair and reasonable here when
17 I don't know if they are.

18 UNIDENTIFIED SPEAKER: Well, the \$150,000 should
19 come out of that equation, Your Honor. The balance of the
20 fees, a component of those consists of \$200,000 in the
21 aggregate of an agent fee and an arrangement fee.

22 THE COURT: That's the lender fee? This is the
23 -- (inaudible, talking over each other.)

24 UNIDENTIFIED SPEAKER: These are, these are,
25 these are -- no. Those are fees that have been grouped in

1 the budget under the term "lender fees", but they include
2 the estimated costs, legal and financial advisory fees of
3 the lenders for the -- this three-week period, including
4 the costs and expenses of our firm; the costs and expenses
5 of our financial advisor, Laughlin Mangies (phonetic) who's
6 representing the lenders in this, so that we can spend an
7 intensive period of time over the next three weeks engaging
8 in workout discussions with this -- these borrowers and
9 with all the other parties in interest, including -- as the
10 witness said, and I agree with her, that we are going to be
11 talking to the homeowners, we're going to be talking to
12 CrossHarbor, we're going to be talking to all the
13 stakeholders over the coming weeks and hopefully preparing
14 additional documentation to allow this matter to proceed in
15 an orderly manner.

16 THE COURT: For which applications are all going
17 to be made -- (inaudible, talking over each other.)

18 UNIDENTIFIED SPEAKER: Applications will be made.
19 We understand and I understand from your local rules, Your
20 Honor - and I don't quibble with those - that any fees and
21 expenses of a secured creditor are --

22 THE COURT: Oversecured creditor.

23 UNIDENTIFIED SPEAKER: -- oversecured creditor
24 have to be approved as being reasonable. And we're happy
25 to subject our fees to a reasonableness test. And we'll

1 submit, you know -- and I'm not sure whether we'll be
2 submitting the equivalent of bankruptcy fee applications to
3 Your Honor, but we will be giving you, you know, clear
4 visibility of the amounts spent, what the functions were,
5 how much time was spent both by, by my firm, the other
6 attorneys, the local counsel representing Credit Suisse's
7 agent, as well as the financial advisor that's been engaged
8 on behalf of the agent to advise the agent and the lenders
9 to make this possible.

10 So that -- the reasonableness component of that,
11 of those fees, are going to be subject to Your Honor's, you
12 know, oversight within reason. And, again, I think the
13 standard will be something probably less than a bankruptcy
14 fee application for a debtor's counsel or committee
15 counsel, but we're --

16 THE COURT: They use the same form.

17 UNIDENTIFIED SPEAKER: We'll use the same form.

18 THE COURT: You know, anyway, that's why I'm
19 troubled with the language that I'm finding -- making a
20 finding of fair and reasonable when I've had -- at least as
21 it relates to some items on this budget and in the term
22 sheet may not be deemed fair and reasonable.

23 UNIDENTIFIED SPEAKER: Well, we can add language
24 to that order, Your Honor, you know, subject to a review, a
25 reasonableness review of the, you know, the legal fees and

1 advisory costs for which the lenders seek reimbursement
2 from, from the, from the company. We expect to be spending
3 a lot of time at this over the next three weeks, Your
4 Honor, and we've spent a lot of time at it to date.

5 THE COURT: See, I'm concerned because -- I'm
6 really concerned with like this three-month -- or
7 "three-month". We wish it was three-month interim
8 financing; but three-week interim financing, because when
9 we get to the end of November, I'm real concerned as to
10 where we're going to be.

11 UNIDENTIFIED SPEAKER: We may be nowhere, Your
12 Honor, unless there's an ability to repay or a prospect for
13 repayment of the various debt on this company and all of
14 the other, you know, obligations that are being incurred.

15 What we're offering, Your Honor, is a short-term
16 financing to allow the parties to sort out those issues and
17 perhaps larger possibilities for a transactional solution
18 here, which clearly went in the air with CrossHarbor. And
19 they've been mining that and pushing that on a prepetition
20 basis. But now we're in a new world here, and we're going
21 to have to take into account all of the interests. We have
22 to make sure there's, you know, some visibility to this and
23 there's proper disclosures.

24 And we're giving everybody an opportunity to have
25 those accelerated, detailed discussions over three weeks

1 without any prospect that at the end of three weeks this
2 \$4.4 million or \$4.5 million that we're committed to fund
3 in is going to be repaid at the end of that three weeks.
4 That is a risk. And that goes to the issue of: Is this a
5 fair and reasonable, you know, interest rate? Are the
6 agent fees that are being charged fair and reasonable under
7 the circumstances?

8 You know, we'll be able to put on testimony from
9 a financial advisor. I have documents that the Court can
10 take judicial notice of from other recent bankruptcy cases
11 showing that these types of terms are -- I won't call them
12 "customary" now because there's nothing customary in this
13 market. These are the minimum terms that people are
14 willing to provide financing on. And, frankly, Your Honor,
15 the lenders were hoping to be getting actually higher
16 interest rates, and the like, because you can't get money
17 in the market right now for a DIP financing in any
18 scenario. And you can read that in the Wall Street Journal
19 or you can listen CNBC every night, and you'll know what
20 the problem is.

21 THE COURT: All things have changed over the last
22 couple of years.

23 UNIDENTIFIED SPEAKER: And they've changed
24 dramatically over the last month, and it's gotten worse.
25 And we're prepared to give you a record on that if you need

1 it so that these types of arrangements that we're talking
2 about are not obscene, they're not unfair, especially
3 since, at the end of three weeks or four weeks, or whenever
4 it might be, if the music does come to a stop, there's
5 nobody going to be writing a check to these lenders to pay
6 them off immediately. There's no way to monetize this
7 credit, either the prepetition credit or the DIP facility
8 credit, in lieu of some sort of sale of collateral,
9 perhaps.

10 And Your Honor must know that there's no
11 real-estate sales activity on any level, much less for, you
12 know, high-valued, you know, real estate such as this. So
13 these lenders are taking an incredible risk. But they have
14 to weigh that against the prospects of an utter train
15 wreck, Your Honor, where we were notified approximately two
16 weeks ago that, all of a sudden, the equity owner can no
17 longer infuse any more money into this company, they're
18 unable to make payroll, they're unable to pay trust fund
19 taxes, they're going to file bankruptcy in two days.

20 And we had conversations with CrossHarbor. And
21 I'm not going to get into all the conversations, but their
22 attorneys were involved. They were -- their attorneys were
23 preparing bankruptcy papers for these companies before
24 Mr. Patten was even retained. And so we had people who
25 were very self-interested in a process towards a

1 transaction that they had in mind. They were, in effect,
2 managing this company. And that's on information and
3 belief, and we can make a record on that, but let's not
4 quibble over all the details. And at the end of the day,
5 they stopped funding these companies by refusing to fund
6 any more money to Ms. Blixseth so that she could, in turn,
7 fund the operating expenses. She admitted they were doing
8 that.

9 And they held -- they hold a \$35 million secured
10 claim over her head; and with that, they were proposing
11 debtor-in-possession financing with some very harsh
12 triggers for a plan of reorganization to be confirmed.
13 Very unrealistic things, Your Honor.

14 THE COURT: Well, what about -- there's
15 references in this order about findings of adequate
16 protection provided here, and is reasonable and sufficient
17 for -- protect the interests of the prepetition agent and
18 prepetition lenders.

19 UNIDENTIFIED SPEAKER: Those are the junior liens
20 that people have not objected to. You know, a majority of
21 the, of the prepetition lender group has, has -- on our
22 steering committee, you know, has authorized this sort of,
23 you know, consensual priming. It's been discussed with the
24 balance of the lender group; they are not objecting to it.
25 Everybody realizes the practicalities of this. If you

1 don't provide the funding, the company goes into Chapter 7.

2 You know, a week ago, they had \$40,000 in their
3 bank account and they were telling us that they needed, you
4 know, large sums of money to pay employees and to play --
5 pay everything else. And, you know, we understand that.
6 We did not want to see a train wreck. We are, I think,
7 wearing the white hats here to try to make sure that
8 there's a smooth landing into Chapter 11 so that these
9 companies and all of their stakeholders can, in good faith,
10 discuss a longer-term financial accommodation for these
11 companies and a possible restructuring. Because there are
12 no lot sales and no other sources of revenue for this
13 company other than, you know, some ad hoc member fees, and
14 the like, to fund a ski season coming up. Which is very
15 important to them, Your Honor; but, again, funding
16 \$15 million or \$18 million into this company to get into
17 half of a ski season without the prospects for any larger
18 solution that would afford any opportunity to repay that
19 and to pay off my client's claims is -- you know, really
20 begs the question of: Where are we going from here?

21 And we think that a three-week period of time
22 allowing the company its own management budget to be funded
23 to carry up this ramp up to the ski season -- and then have
24 everybody sit down and decide whether there is going to be
25 appropriate funding available, how it's going to work, and

1 what are the prospects of a transactional solution.
2 Because funding this company for the next six months or two
3 years or whatever period of time it takes for there to be
4 any meaningful improvement in the real-estate market and
5 the sale of lots by this company is, you know, a pretty
6 harsh scenario.

7 THE COURT: Well, at this point --

8 MR. ALTER: Your Honor, just briefly, Your Honor.
9 I know this is simply argument, but forgive me if I'm not
10 taken by the argument that CS is a party wearing a white
11 hat here. Your Honor, what you're looking at is, is
12 someone who -- a lender that's providing, at an annualized
13 correlated interest rate of 425 percent, \$4 million over
14 three weeks, 1.2 million of it which is set aside for their
15 own fees and costs.

16 THE COURT: Well, Mr. --

17 MR. ALTER: If this lender wants to wear a white
18 hat, they -- (inaudible, talking over each other.)

19 THE COURT: Well, Mr. Alter, the concern and the
20 problem I have, though, with -- I understand your position,
21 but I also understand -- where else are they going to get
22 some interim DIP financing so that they can try to get this
23 thing reorganized? I mean I don't see you coming forward
24 with \$4.5 million.

25 MR. ALTER: Your Honor, I'm glad you asked me.

1 The answer is CrossHarbor. What you heard is that
2 CrossHarbor was --

3 THE COURT: Well, what I just heard from
4 CrossHarbor, from the testimony, is the terms are not as
5 reasonable as these.

6 MR. ALTER: What you heard, I believe, from the
7 witness was that she favored the CrossHarbor term sheet up
8 until the time that she spoke with CS and CS said that they
9 refused to have anyone prime their liens although they were
10 willing to prime their own unaffiliated -- (inaudible,
11 talking over each other.)

12 THE COURT: Well, at this point in time, I don't
13 have any other evidence than what was testified to.

14 UNIDENTIFIED SPEAKER: Your Honor, I think, I
15 mean for the reasons set forth in our papers, this is a
16 truly onerous, onerous DIP only serving this lender.

17 THE COURT: Well, then you've got to come forward
18 and prove it to me.

19 UNIDENTIFIED SPEAKER: Your Honor, again, we are
20 ourselves, as members, under a motion that was filed 36
21 hours ago, and I suspect that we will revisit this argument
22 hopefully in three weeks. But I want the Court to please
23 be clear in the way the members look at this, because this
24 DIP was an entire disappointment to the membership that was
25 looking for some assurance that this club would continue,

1 that this club would be viable, that -- (inaudible, talking
2 over each other.)

3 THE COURT: (Inaudible) -- my question. I mean
4 I'm looking here at a debtor, four entities, that obviously
5 have no ability to finance anything or to pay anything at
6 this point without this DIP financing. Now, the terms, the
7 15 percent, some of the terms may not be as favorable as
8 one would like to see or which may have been seen just a
9 short period of time ago prior to the economic crisis, but
10 it is what's on the table at this point, and I don't see
11 anything else that I can look at to, to compare.

12 UNIDENTIFIED SPEAKER: I understand, I understand
13 the Court's predicament. It's, frankly, the same
14 predicament that we have struggled with as a membership in
15 talking to our clients. At the end of the day, we want
16 financing, we want this club to continue. But, you know,
17 let it be clear that this financing is not a white hat. It
18 is far, far from it.

19 THE COURT: Well, whether it is or it isn't, it's
20 what I have before me to deal with. I mean if the ad hoc
21 committee of members want to come forward with some lending
22 package that resolves the issue, I would welcome that at
23 any subsequent hearing.

24 UNIDENTIFIED SPEAKER: We appreciate that, that
25 invitation, Your Honor, and very much intend over the

1 course of the next two or three weeks, should Your Honor
2 approve this interim financing or even - I mean, obviously,
3 the Court could delay the hearing on this - but to the
4 extent that the Court approves this interim financing,
5 spend the next three weeks trying to find the right
6 solution for this club to give it some, some sense and some
7 assurance that these jobs that are there -- there's
8 700-some-odd jobs, I believe, that are going to be saved,
9 that the season is going to be maintained, and the value of
10 this club is going to be maintained.

11 UNIDENTIFIED SPEAKER: We're all, we're all in
12 favor of that, Your Honor, in maintaining the value of the
13 club. It's our collateral. And, indeed, prior to today
14 upon, you know, an invitation to talk, you know, very
15 initially with the ad hoc committee, they were asked, "Are
16 you willing to contribute financially to, you know, a
17 solution, a DIP financing, an operation of the facilities?"
18 And the initial response was in the negative.

19 However, Your Honor, we were hopeful that under
20 the circumstances and the reality of bankruptcy, we will
21 have more productive discussions with them and other
22 stakeholders who have a vested interest in making sure that
23 the wheels don't completely fall off in the coming weeks
24 and this doesn't end up in Chapter 7. And, hopefully,
25 these other parties will contribute to a solution because

1 it will be very difficult, I imagine, for the lenders
2 themselves to again unilaterally continue to fund and
3 provide financial accommodations for the long haul for a
4 business model that at this time, given market conditions
5 and the real hard reality of the world we're in, is not
6 going to be generating much in the way of revenue.

7 THE COURT: Mr. Chehi, what impact does this have
8 on the Department of Revenue tax? Does priming have any
9 impact?

10 MR. CHEHI: Your Honor, to the extent that there
11 are valid, preexisting, unavoidable liens on these, these
12 assets, we are taking junior, junior liens, not priming
13 liens. We are recognizing the existence of a category of
14 other claims.

15 THE COURT: Priority taxes.

16 MR. CHEHI: I'm not saying "priority taxes". If
17 they're not secured, they're not priority. There's a lot
18 of unsecured claims, I'm sure, in this case, that -- we're
19 trying to, you know, again, for --

20 THE COURT: We just don't want too many of them.

21 MR. CHEHI: Yeah, we don't want too many of them.
22 But what we're trying to do is to cover the administrative
23 costs that are incurred. You know, someone came up here
24 and, you know, questioned, it appears, the carve-out. You
25 know, Your Honor, if you don't want a carve-out in the case

1 for the U.S. Trustee and for debtors' counsel fees, you
2 know, we're agreeable to eliminating that. But in all
3 fairness, you know, we would like to make sure that there's
4 some independent -- (inaudible.)

5 THE COURT: I'm not going to eliminate the
6 carve-out because, otherwise, it becomes very difficult for
7 the debtor to find professionals to assist through the
8 process.

9 MR. CHEHI: And they did not have to ask us for a
10 carve-out, Your Honor; this was proposed Day 1. And, in
11 fact, I think if the U.S. Trustee is here, they've seen the
12 proposal, and we've talked to them. We've given a very --
13 what they felt was a fair proposal. You know, we're not
14 asking for all kinds of what would be viewed in other
15 circumstances, you know, very, you know, outrageous types
16 of requests.

17 As far as the release, Your Honor, a lot of
18 discussion about that today. And we'll have to get away
19 from the witness, but let's talk a bit about the fact that
20 the release that's being requested is typical of any
21 release that any borrower in these circumstances, a
22 Chapter 11 borrower or a prepetition borrower, makes when
23 they ask for an over-advance or whatever it might be as a
24 release.

25 That release, though, does not release any estate

1 claims against Credit Suisse. It is not binding on anybody
2 except these debtors and their capacities as borrowers.
3 The creditors committee, a trustee, any other party in
4 interest that has rights to, you know, vindicate the
5 estates, the claims and causes of action, if any -- and I
6 don't think there are any. All we would have is the tort
7 of loaning money here, perhaps.

8 THE COURT: So without the release, you would not
9 lend the \$4.5 million?

10 MR. CHEHI: Well, without the release from the
11 debtors, yes, that's a requirement. But that is without
12 prejudice to a creditors committee, you know, doing an
13 examination of whatever the arrangements are between Credit
14 Suisse - which is a true third-party lender here, Your
15 Honor - and these companies. And if there's any, you know,
16 qualification to the liens -- we provided our lien reports
17 and, you know, the UCC filings and that type of analysis to
18 the debtors before the filing. They requested that, they
19 got it. These liens are good liens, Your Honor. But this
20 is all without prejudice to somebody coming in and
21 commencing an avoidance action on the liens. That's not
22 what this case is about because that's not in the cards.
23 If there are any other causes of action people want to, you
24 know, dream up and assert against Credit Suisse, they're
25 free to do it. We've built in a 90-day period for people

1 to do that. And, you know, we encourage the U.S. Trustee
2 to appoint a creditors committee, and everybody can look at
3 it.

4 THE COURT: All the, all the liens have been
5 perfected?

6 MR. CHEHI: I believe so, Your Honor. I think
7 there were --

8 THE COURT: -- (inaudible, talking over each
9 other) -- UCC?

10 MR. CHEHI: Absolutely. There may have been, you
11 know, what I would call a number of trivial, maybe, you
12 know, trade-name or, you know, copyright type of issues, or
13 something like that, but those are immaterial in the big
14 scheme of things. We're talking about real estate and
15 sticks and bricks and the real stuff here, Your Honor, all
16 the equipment. Those are all good liens.

17 And, again, we'll make it available to whomever.
18 We'll make it available to counsel here. All of these
19 records, they can go at it and take a look. But it's --
20 that's not going to be -- you're not going to hear about
21 that again, Your Honor, because it's going to be time sort
22 of wasted. But I encourage people to do it. We have
23 nothing to hide on that front.

24 THE COURT: Okay. Mr. McKay.

25 TRUSTEE MCKAY: Your Honor, since we were

1 mentioned, I'd just point out to the Court we did negotiate
2 a little bit longer time for the committee on bringing any
3 claims. With regard to the carve-out, we have not really
4 had discussions on the carve-out. And recognizing that
5 this is interim financing, we may have an issue that we
6 will bring before the Court in any long-term finance
7 package about the reasonableness of the carve-out as it
8 should, in our view, extend to the fees of a -- I think a
9 Chapter 11 trustee is probably remote, but certainly a
10 Chapter 7 trustee. And we were -- are anxious to discuss
11 that in the coming weeks, you know, with counsel for Credit
12 Suisse. But that may be an issue that will arise some
13 other day, so --

14 THE COURT: Yeah, okay. Thank you, Mr. McKay.

15 Mr. Patten.

16 MR. PATTEN: Your Honor, I want to make one point
17 and then ask the Court if it would like more testimony.

18 But the debtor here has had two competing
19 financing proposals, and the debtor had to weigh the merits
20 and the positives and negatives of both, and she made a
21 business decision. And I think that's entitled to a lot of
22 weight by the Court. There are a lot of problems with the
23 CrossHarbor proposal. It might get everybody through the
24 Christmas season, but it really doesn't do much beyond
25 that. And so I think that Ms. Blixseth's decision, unless

1 it is plainly wrong, ought to be given respect by the Court
2 and, frankly, by the members.

3 Your Honor, if -- was the Court's only concern
4 about the fair and reasonableness relating to the
5 professional fees that are set out in the budget, or were
6 there other concerns?

7 THE COURT: Well, it was the concern about the
8 finding, that I'm finding that there -- it was a paragraph
9 on page 6. It was troubling to me when I'm making a fair
10 and reasonable decision when those may still need to be
11 made.

12 MR. PATTEN: But that only relates to the
13 professional fees, Your Honor, as opposed to the other
14 aspects?

15 THE COURT: Well, related to the term sheet and
16 use of cash collateral, fair and reasonable.

17 Now, as it relates to the payment of the other
18 items on here such as payroll, utilities, fuel, I mean
19 obviously those are actual expenses. I mean I don't think
20 there's any question about, about those set forth; sales
21 office operations. You know, I mean you can go down
22 through them. I suspect that I don't have a problem with
23 actual expenses and the fact that they're necessary for the
24 operation of this business in the next three weeks.

25 There's just a concern that I had when -- I mean

1 it looked as if there was going to be some limitation on a
2 subsequent hearing that I get this thrown in my face that,
3 "Well, you've already made a finding that it was all fair
4 and reasonable."

5 MR. PATTEN: Okay.

6 THE COURT: That's my concern on that.

7 MR. PATTEN: Well, we can, we can put on some
8 more evidence, if the Court would like to hear it, about
9 the fairness and reasonableness of the overall proposal and
10 it how it relates to what --

11 THE COURT: Well, I think, I think that the
12 interim order can be adjusted merely by some phraseology
13 subject to Court, Court review and approval as it relates
14 to the professional fees and expenses.

15 MR. PATTEN: Okay.

16 UNIDENTIFIED SPEAKER: Your Honor, the only thing
17 I would ask is that if, if it is subject to Court approval,
18 that it be on notice and with an opportunity for other
19 parties and creditors to object, as well.

20 THE COURT: That's, that's how we do it.

21 UNIDENTIFIED SPEAKER: Thank you, I appreciate
22 it.

23 THE COURT: Because, well, the rule allows fees
24 to be approved under \$1,000 without notice and a hearing,
25 but I don't think that's going to happen in this case.

1 UNIDENTIFIED SPEAKER: Thank you, Judge.

2 MR. BUTLER: Your Honor?

3 THE COURT: Mr. Butler.

4 MR. BUTLER: I'm sorry. I don't even know what
5 version you're working on because mine was a 30-day
6 facility and you keep saying "21 days". But that's one of
7 our concerns, both for the State of Montana and the
8 citizens of Montana, is that this order is packed full of
9 statements and restrictions and the giving up of rights.
10 And it is an interim order. Now, if the interim order can
11 say "everything is subject to a final", I think we're fine,
12 but when they --

13 THE COURT: It has to. It's going to be subject
14 to a final.

15 MR. BUTLER: It needs to, Your Honor, because
16 the -- if you start looking at Paragraph 18 --

17 THE COURT: Well, that's how we deal with interim
18 orders.

19 MR. BUTLER: Okay. I appreciate it.

20 THE COURT: I mean they're always subject to a
21 final.

22 MR. BUTLER: Because starting on page --
23 Paragraph 18 and Paragraph 20, we aren't the committee, we
24 won't ever be a committee, but anytime you're hamstringing
25 third parties' right to investigate, including subsequent

1 trustees -- if you've heard anything, you've heard it's a
2 bad economy, we're under water, and the only lender that
3 will lend money is the lender that has skin in the game.
4 Trying to hamstring a subsequent trustee, at least from my
5 experience - and we can argument this at the final - is
6 wholly inappropriate. You don't know where the case is
7 going to go. If the debtor wants to give up rights, fine,
8 but don't impact third parties because we don't know what's
9 out there.

10 THE COURT: And that's, in essence, what was just
11 said, that they won't.

12 MR. BUTLER: Yeah, but --

13 UNIDENTIFIED SPEAKER: We're not impacting
14 third-party rights except to the extent that if people want
15 to assert claims against us - and, again, I don't think any
16 such claims exist - they have 90 days to do it. This is
17 not going to be a languishing, you know, it will take two -
18 three years to figure out whether there's any claims
19 against Credit Suisse.

20 You know, the alternative to this, Your Honor, is
21 simply that the money will not be available and this, this
22 company can -- it can have a Chapter 7 trustee tomorrow.
23 And that's, that's the stark reality.

24 UNIDENTIFIED SPEAKER: Your Honor, can I be
25 heard?

1 UNIDENTIFIED SPEAKER: These terms are very
2 standard provisions that DIP lenders request and
3 prepetition lenders request, and we want to, you know, have
4 those are protections. We're agreeable to adjusting the
5 reasonableness issue on the professional fees and expenses
6 incurred by the lenders; but, otherwise, the order is the
7 order. It's an interim DIP financing order which is, you
8 know, subject to entry of a final order; it is nevertheless
9 enforceable as to the amounts that are going to be advanced
10 before the final order.

11 MR. BUTLER: And maybe I misunderstood it. Mine
12 has 60 days, not 90. Thirty days isn't much more, but it's
13 something.

14 THE COURT: Well, I think regarding -- it's about
15 five o'clock. Obviously, because of staff and court
16 security, we try to conclude these matters by five. Now,
17 you all indicated that you're going to be around, many of
18 the principal players are going to be around with
19 discussions tomorrow, as I understand it. I did hear that,
20 at least. I have Missoula hearings tomorrow, so I'm going
21 to be here. And I guess I would like to see what the
22 proposed order is, an interim order at this point in time
23 is, so that I've got the latest version.

24 MR. PATTEN: Your Honor, we've lodged the latest
25 version this morning.

1 THE COURT: That's the latest one?

2 MR. PATTEN: Oh, well, I don't know if we lodged
3 it. I know that we provided chambers with a copy of the
4 latest.

5 THE COURT: Well, see, but when I open that up
6 and look at it, I've got -- there are two versions of the
7 term sheet, two versions of the interim order. I don't
8 know which -- one's Version 5 and 7, and one's Version, I
9 don't know, 6 and 8.

10 UNIDENTIFIED SPEAKER: Your Honor, it's the most
11 -- you know, it's the highest-number versions. I believe
12 the term sheet is --

13 THE COURT: Well, I'm not going to speculate as
14 to which one it is. You need to get me the latest interim
15 proposed order.

16 MR. PATTEN: We will do that.

17 UNIDENTIFIED SPEAKER: Your Honor, can I just
18 make one quick point? Because I want to make certain that
19 the record was clear with a comment that was made. I
20 believe that a concern that was assuaged of this gentleman
21 was that everything is pending a final hearing; however,
22 what I believe that CS's counsel said was, "Subject to the
23 fact that it is binding as to any amounts that are financed
24 pursuant to the interim order."

25 Now, to the extent that the amounts are financed,

1 you know, in the next three weeks until the -- up to the
2 final hearing, that doesn't provide much protection for
3 this gentleman's concerns.

4 THE COURT: Well, do you have a comment --

5 UNIDENTIFIED SPEAKER: Yeah.

6 MR. WHITMORE: Your Honor, can I be heard?

7 UNIDENTIFIED SPEAKER: And the comment is the
8 order will govern the advances that are being made up until
9 the final order.

10 THE CLERK: Excuse me.

11 THE COURT: Up to the extent of \$4 million?

12 UNIDENTIFIED SPEAKER: Or some lesser amount if
13 the Court wants to allocate a lesser amount. You know, but
14 to tell you the truth, on this short period of time, it's
15 going to be almost the whole thing.

16 THE COURT: Lynn?

17 THE CLERK: I apologize for interrupting, but
18 Patti wasn't picking up that gentleman's statement.

19 THE COURT: I was also hearing somebody over the
20 telephone, I believe, that was trying to interject
21 something, maybe. Was I?

22 MR. WHITMORE: Yes, Your Honor. This is Clark
23 Whitmore. I apologize. I don't if I -- how my reception
24 is coming through there.

25 THE COURT: You're kind of faint.

1 MR. WHITMORE: Can you hear me?

2 THE COURT: You're faint. Mr. Patten, can you
3 hear it okay?

4 MR. PATTEN: I can hear him, yes, Your Honor.

5 THE COURT: Okay. Please proceed.

6 MR. WHITMORE: I'll try to speak up. Obviously,
7 I'm counsel along with Mr. Cuffe to Mr. Snow.

8 And we certainly understand that the Court needs
9 to approve some sort of financing that will enable the
10 debtor to continue its operations, but we believe that
11 since the prepetition lenders here are owed more than \$300
12 million, they should not be able to use their position as
13 DIP lenders for a real small amount of money in order to
14 benefit their status as prepetition lenders
15 inappropriately. I think that the order should be
16 scrutinized very carefully with respect to 506(c) waivers,
17 cross-collateralization, releases, indemnifications.
18 Prohibitions on the use of money to investigate claims
19 against the prepetition lenders and various other
20 provisions really have no business in a case like this
21 where the prepetition lenders really are making a
22 protective advance to protect their own collateral. And
23 they should be getting, with respect to their position as
24 prepetition lenders, should be getting a replacement lien,
25 and that's about what they should be getting.

1 And this law-and-order arguably is an effort by
2 the prepetition lenders by making a very small DIP loan at
3 a high cost to benefit themselves with respect to their
4 prepetition position.

5 And we would like to have an opportunity at the
6 continued hearing to, you know, go through in a very
7 detailed basis the provisions of the proposed order that
8 need to be challenged in that respect.

9 UNIDENTIFIED SPEAKER: Your Honor, for the
10 record, I would very much echo those comments, and I
11 thought they were very well-said. I know that we're coming
12 through the close of our day. I do note for the record
13 that we did file, on behalf of our client group, a full
14 objection. And, obviously, the Court the entertain that at
15 its discretion.

16 THE COURT: Yes, Mr. Chehi.

17 MR. CHEHI: I'll go to the podium so the comments
18 aren't dropped. The 506(c) waiver is subject to the final
19 hearing, Your Honor. There's no attempt to get a 506(c)
20 waiver today. That's built into the order. We have tried
21 to keep all of these provisions what I would call
22 standard-practice provisions, at least in the jurisdictions
23 that I've been practicing in in Delaware. We are not
24 including any offensive, you know, elements to this. The,
25 the prepetition lenders will receive as adequate protection

1 junior liens on, on the debtor's property subject to
2 preexisting liens of third parties that are valid and
3 enforceable and unavoidable, and the like.

4 I'm not sure what the cross-collateralization
5 issue is. We're not trying to cross-collateralize. We're
6 giving adequate protection liens to, to interests that are
7 being primed subject to third-party interests.

8 And, again, I think you can, you can read through
9 the order, and it's very fair. We're not looking to ask
10 for more than we should get; and, frankly, any more than I
11 would agree to as debtor's counsel in representation of the
12 debtor. I've been on both sides of this. This order's a
13 very straight order for financing in these circumstances,
14 which are very risky; no prospective repayment at the end
15 of three weeks if things don't go swimmingly and probably
16 not any prospective repayment soon on any of these amounts
17 even if things do go very well in terms of a reorganization
18 process.

19 And so for all the complaining about how
20 everything should be subject to be revisited, you know,
21 there is provision in the order for an amount that is being
22 authorized on an interim basis until you can get to the
23 final hearing. And I assume we could have the final
24 hearing in about, you know, two weeks out from now. And
25 that -- you know, maybe we should look at the budget and

1 pick a date and allow the debtors to use an amount of money
2 that takes them to the final hearing, and then that will be
3 protected under the terms of this order. At the hearing,
4 people can talk about 506(c) waivers and, you know, they
5 can argue about that at that point; and then we can decide
6 whether we're going to lend the additional amounts that are
7 allowed to give the company another week or whatever it is
8 that's remaining on the facility. You know --

9 MR. WHITMORE: You know, Clark Whitmore. It
10 seems to me a great suggestion if the suggestion is that
11 the prepetition lenders receive only a replacement lien at
12 this point since they are, after all, principally
13 real-estate lenders; and that the DIP lenders receive all
14 the protections they're talking about; and that there be a
15 final hearing set where these other provisions can be
16 talked about. There's really no need to grant the
17 prepetition lenders any relief other than a replacement
18 lien at this point.

19 UNIDENTIFIED SPEAKER: Your Honor, all I can say
20 is that we have a form of order here that is what we're
21 going to have to proceed upon with the adjustment that Your
22 Honor suggested and we're agreeable to, and that is
23 subjecting the fees of the lender's professionals to, you
24 know, a judicial reasonableness determination and a fee
25 application subject to, you know, notice to the third

1 parties, and the like. We're happy to do that. The other
2 terms of the order are really, you know, what they are.

3 To the extent that Your Honor were inclined to
4 authorize less than the full \$4.4 million or \$4.5 million
5 today on an interim basis so that there's some portion of
6 that for the third week, or whatever the time period is
7 that would follow a final hearing, you know, hold that in
8 reserve, we could, you know, adjust in some way the -- you
9 know, that's where the parties get to adjust their rights.
10 We could adjust the fees. You know, I'm trying to be
11 reasonable here to make this -- I think it's actually going
12 to be, from an administrative point of view, somewhat
13 burdensome for the debtors, but if you're going to approve
14 some sort of, you know, three-quarters, or whatever it is,
15 advance off this 4.4 or 4.5, we could, you know, we can
16 live with that. And the debtors are going to have to come
17 back within a short period of time to allow the parties to,
18 I guess, dispute about whether there's another week of
19 financing that they need. Actually, the costs of doing
20 that, and the like, could be relatively high, but we made
21 provision for that in the order.

22 THE COURT: Well, but your budget lines out, in
23 essence, that if it's approved, there's so much allocating
24 each week --

25 UNIDENTIFIED SPEAKER: That's right.

1 THE COURT: -- during the three-week period.

2 UNIDENTIFIED SPEAKER: That's right. But we can
3 -- you know, of course, as lenders, if the borrowers come
4 in and say, "Listen, we need to have an additional \$50,000
5 or \$100,000 that's outside of the budget," the term sheet
6 provides that the budget can be adjusted because people may
7 not have clear visibility on what their issues are going to
8 be, financial needs two weeks from now. That's not unusual
9 in a Chapter 11 case.

10 You know, we're willing to work within Your
11 Honor's authority. And if you want to scale back the
12 number to get - (inaudible) - final hearing, that's fine.

13 THE COURT: From the standpoint -- so, basically,
14 you have financing that goes through the 30th; is that
15 right?

16 UNIDENTIFIED SPEAKER: The 21 days. It's a
17 21-day financing.

18 UNIDENTIFIED SPEAKER: The 30th.

19 UNIDENTIFIED SPEAKER: Thirty days?

20 UNIDENTIFIED SPEAKER: It's the 30th of November.

21 UNIDENTIFIED SPEAKER: The 30th of November.

22 THE COURT: It goes to the 30th, to the end of
23 the month. So, in essence, and then you have another week,
24 December 5th, which is just kind of on the -- I guess in
25 the future and not part of the 4.5.

1 UNIDENTIFIED SPEAKER: And that's the fourth week
2 that we felt it was important for all the parties in
3 interest and the Court to know what the additional
4 immediate needs of the company appear to be, given their
5 best forecasts now and budget, so that as the parties are
6 having these accelerated discussions, they can focus on the
7 need to step it up. There's another approximately
8 \$2 million needed at that fourth week.

9 THE COURT: Well, at this point in time, then --
10 I mean, obviously, to have financing discussed and final,
11 we would really need to have some type of hearing during
12 the early part of the week of the 24th such as like Tuesday
13 the 25th, it would appear to me. Because, otherwise,
14 you're running into Wednesday, Thanksgiving is on Thursday
15 day --

16 UNIDENTIFIED SPEAKER: Right.

17 THE COURT: -- and the financing ends on the
18 30th.

19 UNIDENTIFIED SPEAKER: Correct.

20 UNIDENTIFIED SPEAKER: And, Your Honor, I think
21 that's, you know, a practical issue. I'm suggesting here
22 to the Court that conserving judicial resources and
23 everybody else's resources here, it may be just as well to
24 approve the entire amount to allow the company to get
25 through to the 30th of November instead of having people

1 spending a lot of time about this. But, again, we're --

2 THE COURT: Well, no, but what I'm saying -- I
3 think you're misunderstanding what I'm getting to. So we
4 have something lined up on --

5 UNIDENTIFIED SPEAKER: Sure.

6 THE COURT: -- December 1, there needs to be a
7 hearing prior to that time so we know what's going to
8 happen financing-wise as of the 1st.

9 UNIDENTIFIED SPEAKER: I think you need to --
10 everybody has to --

11 THE COURT: And, and that first week in December
12 may raise problems for people, people's availability. So
13 I'm just -- I'm looking to have some hearing prior to that
14 time, because by that time, you will have had not quite two
15 weeks to discuss where things are going financing-wise.

16 UNIDENTIFIED SPEAKER: And the other parties have
17 two weeks.

18 THE COURT: That's right.

19 UNIDENTIFIED SPEAKER: It's a big "you", a Y-O-U,
20 capital "Y", because we are not the only solution here.

21 THE COURT: I understand, I understand. In fact,
22 I would hope that the sphere becomes very large in what the
23 offers might be. And they may get very small. Who knows?
24 I'm just looking at this point -- so just keep that in mind
25 that it may be Tuesday the 25th we would have another

1 hearing to discuss what happens after the 30th.

2 UNIDENTIFIED SPEAKER: I wanted to confirm that I
3 -- I wasn't certain that Counsel, that Counsel understood
4 the point of Your Honor, that Your Honor is not just
5 talking about a final hearing for this interim financing
6 but an additional hearing for further financing that would
7 extend beyond December 1st.

8 THE COURT: Well, yeah. I mean we have to.
9 Where are we going to be on December 1? There won't be any
10 financing.

11 UNIDENTIFIED SPEAKER: That's right, Your Honor.

12 THE COURT: I mean there's no need waiting until
13 the 2nd or 3rd because you've got employees, you've got
14 operations up there that are going to not be running.

15 UNIDENTIFIED SPEAKER: There will be a solution
16 reached within the next two weeks or not. You know, and
17 then it may need to be documented and proposed to the
18 Court, but that's the point.

19 THE COURT: So that's my thought. You look at
20 that. Now, you had indicated you were having meetings
21 tomorrow, probably this evening and tomorrow. I'm not sure
22 what people's schedules are. I realize not all of you may
23 be available -- maybe you will all be available, maybe
24 there will be more people available. But I want to be able
25 to review the final proposed order. And if I have

1 questions, I want to be able to address them to somebody
2 before that's entered. And I guess I'd like to, you know,
3 basically tentatively set something right now for tomorrow.

4 MR. PATTEN: Your Honor, we -- and maybe we
5 confused the Court by doing this, but we first lodged with
6 chambers the final proposed order and the final proposed
7 term sheet, and then we lodged a red-line version or a
8 black-line version that shows the changes from what had
9 previously been submitted to the Court. And that's -- I
10 think maybe that's what Your Honor's looking at in terms of
11 the version numbers.

12 THE COURT: Well, we've got two separate e-mails
13 with four separate documents.

14 MR. PATTEN: The second of those e-mails is the,
15 I believe, the red-line version.

16 THE COURT: Okay. Well, here's what I want, it's
17 not hard: I want the final proposed order and term sheet.

18 MR. PATTEN: Okay.

19 THE COURT: And I don't think that's what's been
20 filed at this point; maybe it is.

21 MR. PATTEN: No, I think it is.

22 THE COURT: Okay.

23 UNIDENTIFIED SPEAKER: There's one that I believe
24 may be filed under -- (inaudible, out of range of
25 microphone.)

1 MR. PATTEN: Right. But I filed the one --
2 (inaudible, talking over each other.)

3 THE COURT: That was filed yesterday.

4 MR. PATTEN: Yeah, I know. But Mr. Chehi sent me
5 one this morning that we then passed on to the Court this
6 morning.

7 THE COURT: Okay, there's another one that was
8 lodged this morning. So that's your most recent one?

9 MR. PATTEN: Yes.

10 THE COURT: Okay. Let me just pull it up here
11 and see what the version is.

12 UNIDENTIFIED SPEAKER: The correct version
13 numbers, Your Honor, is Version 13 for the term sheet and
14 Version 7 for the interim order.

15 THE COURT: Well, actually, the filed one doesn't
16 have the versions on it.

17 UNIDENTIFIED SPEAKER: The very last page of
18 the -- (inaudible, out of range of microphone.)

19 THE COURT: Does it? Well, I have 27 pages here
20 with the last one for my signature, but it doesn't have
21 a --

22 MR. PATTEN: Well, we'll bring, we'll bring one
23 over to chambers. We'll provide one.

24 THE COURT: Okay.

25 MR. PATTEN: I don't have one. I thought I had

1 one. You have one?

2 MR. CHEHI: I do.

3 MR. PATTEN: So maybe this is simple. Mr. Chehi
4 has a copy.

5 UNIDENTIFIED SPEAKER: If I may approach the
6 bench, Your Honor.

7 THE COURT: You may approach. So I've got an -
8 (inaudible) - term sheet and a budget?

9 UNIDENTIFIED SPEAKER: Yes, Your Honor.

10 THE COURT: Okay, thank you. I appreciate that.

11 UNIDENTIFIED SPEAKER: (Inaudible, out of range
12 of microphone) -- budget will be attached to that
13 document -- (inaudible.)

14 THE COURT: So this hasn't changed from the 9th?

15 UNIDENTIFIED SPEAKER: No.

16 THE COURT: Okay.

17 UNIDENTIFIED SPEAKER: Your Honor, the comment
18 that I just heard from a couple of lawyers, including
19 myself, I was about to make, is: Obviously, we have not
20 seen that revised version yet that was submitted to the
21 Court. And so, hopefully, we get a copy at some point in
22 time.

23 THE COURT: I think that's reasonable. If this
24 is the final one that's been lodged, it's Docket No. 17.
25 Okay?

1 One other thing procedurally -- and I don't want
2 to keep, keep you much longer, but there's some things I
3 just saw in looking through the docket that I think need to
4 be addressed because it may be different here than in some
5 districts: As you know, we have 10-day negative noticing.
6 A motion's filed, there's a 10-day notice that goes with it
7 for most motions. The opposing party has 10 days to
8 respond and request a hearing. You do that right with the
9 docketing.

10 When you go to docket your document, you should
11 have a date that comes up, and you can fill in as to when
12 the hearing will be and all of that. If you have any
13 questions about that, check with either a fellow Montana
14 practitioner or with the clerk's office so that when you
15 set your response, you're setting it for hearing. And it
16 will be set for hearing probably at the next hearing.
17 (Inaudible) -- particular case scheduled for that site. So
18 for this case, since it's a Butte case, it would be set for
19 December 9th, is the Butte hearing date that's been
20 scheduled. It's right on our website. You can find out
21 all the hearing dates for all the sites.

22 So it's your responsibility to get that location
23 in there. It's also your responsibility when you file the
24 motion to get the due date in there on the 10 days. So if
25 you file something on the 12th, the due date's the 22nd,

1 plus then we add in a mailing before we issue the order.
2 But if there's not a response, it's granted on that -- on
3 the appropriate day. I just wanted to note -- because some
4 districts are different, and they do scheduling in chambers
5 or in the clerk's office; here, you, the attorney opposing,
6 schedules it. So just so you're aware of that.

7 Tomorrow, I can't honestly tell you how long
8 hearings may go. I know Mr. Patten may have -- I think you
9 have some other hearings tomorrow, as well, or maybe
10 some --

11 MR. PATTEN: No, they're taken care of, Judge.

12 THE COURT: Okay. So there may be resolution of
13 some things that would have taken longer. So I guess I'm
14 thinking that maybe we could -- depending on schedules, we
15 could meet about one o'clock to see if there are any final
16 issues that I might have based upon my review of the
17 interim order. And if you want to be here and discuss
18 them, you certainly are welcome to. And at that point,
19 subject to minor change or some change, you know, an order
20 will be entered.

21 MR. PATTEN: Your Honor, I might advise everybody
22 I have copies -- I think I have six or seven copies of the
23 red-line versions from what was filed before that I'm happy
24 to give to the first six people that want them.

25 THE COURT: Okay, very good. So one o'clock

1 tomorrow. And we'll meet again and see if there are any
2 final concluding issues that we need to go over before we
3 proceed over the next three weeks, so forth. Okay?

4 UNIDENTIFIED SPEAKER: Is it fair to say, Your
5 Honor, before you leave the bench for one second, that you
6 have not yet addressed some of the more substantive
7 objections, that you'll enter an order but you have not yet
8 ruled on the issues of the 506(c) waiver or the releases or
9 the prepetition adequate protection? That has not yet been
10 determined by the Court?

11 THE COURT: Well, I'll look at, I'll look at
12 this -- (inaudible, talking over each other) --

13 UNIDENTIFIED SPEAKER: Thank you.

14 THE COURT: -- objections, see if there's
15 anything final that we need to go over.

16 UNIDENTIFIED SPEAKER: Thank you.

17 THE COURT: We'll be in recess.

18

19 * * * * *

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the electronic recording of the proceedings in the
above-entitled matter, all done to the best of my skill and
ability.

Jonny B. Nordhagen